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*Kathy Cribbs
10th Grade*

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

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Open Meetings

A notice of a meeting filed with the Secretary of State by a state governmental body or the governing body of a water district or other district or political subdivision that extends into four or more counties is posted at the main office of the Secretary of State in the lobby of the James Earl Rudder Building, 1019 Brazos, Austin, Texas.

Notices are published in the electronic *Texas Register* and available on-line.
<http://www.sos.state.tx.us/texreg>

To request a copy of a meeting notice by telephone, please call 463-5561 if calling in Austin. For out-of-town callers our toll-free number is (800) 226-7199. Or fax your request to (512) 463-5569.

Information about the Texas open meetings law is available from the Office of the Attorney General. The web site is <http://www.oag.state.tx.us>. Or phone the Attorney General's Open Government hotline, (512) 478-OPEN (478-6736).

For on-line links to information about the Texas Legislature, county governments, city governments, and other government information not available here, please refer to this on-line site.
<http://www.state.tx.us/Government>

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for May 4, 2005

Appointed to the Texas School Safety Center Board for a term to expire February 1, 2007, Lucy Rubio of Corpus Christi. Ms. Rubio is being reappointed.

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2011, Christopher D. DeCluitt of Waco (replacing Joe Bob Hinton of Crawford whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2011, Christopher Steve Adams, Jr. of Granbury (replacing Janet K. Sparks of Cleburne whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2011, Robert Manning Christian of Jewitt (replacing M. Lance Phillips of Mexia whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2011, Roberta Jean Killgore of Somerville (replacing Celeste Kotter of Marlin whose term expired).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2011, Carolyn H. Johnson of Freeport (Ms. Johnson is being reappointed).

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2011, Truman Otis Blum of Clifton (replacing Carl Lynn Elliott of Navasota whose term has expired).

Designated Steve Peña of Round Rock as Presiding Officer of the Brazos River Authority Board of Directors for a term at the pleasure of the Governor. Mr. Peña is replacing Joe Bob Hinton as presiding officer.

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2009, Walter Eugene Sjoberg, Jr., M.D. of Cypress Mill (Dr. Sjoberg is being reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2009, Ramona Dover Kennedy of Flower Mound (Ms. Kennedy is being reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2011, Esther Helen Steinberg of Sugar Land (Ms. Steinberg is being reappointed).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2011, Linda S. Strong of Corpus Christi (replacing Jack Tinsley whose term expired).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2011, Susan Farris of Springtown (replacing Sylvia Acosta whose term expired).

Appointments for May 5, 2005

Appointed to the Texas A&M University System Board of Regents for a term to expire February 1, 2011, Lupe Fraga of Sugar Land (replacing Susan Rudd Bailey of Benbrook whose term expired).

Appointed to the Texas A&M University System Board of Regents for a term to expire February 1, 2011, Gene Stallings of Powderly (replacing Lionel Sosa of Floresville whose term expired).

Appointed to the Texas Historical Commission for a term to expire February 1, 2011, Diane Bumpas of Dallas (Ms. Bumpas is being reappointed).

Appointed to the Texas Historical Commission for a term to expire February 1, 2011, Donna Carter of Austin (replacing Chris Carson whose term expired).

Appointed to the Texas Historical Commission for a term to expire February 1, 2011, Marcus Warren Watson of Dallas (replacing Gail Loving Barnes whose term expired).

Appointed to the Texas Historical Commission for a term to expire February 1, 2011, Thomas R. Phillips of Bastrop (replacing Jean Ann Ables-Flatt whose term expired).

Appointed to the Texas Historical Commission for a term to expire February 1, 2011, Sara Armstrong Hixon of Houston (replacing Mamie McKnight whose term expired).

Appointed to the Texas Historical Commission for a term to expire February 1, 2011, Earl Broussard, Jr. of Austin (replacing Juan Sandoval whose term expired).

Appointed to the Texas Historical Records Advisory Board for a term to expire February 1, 2008, Ann Maria Pfeiffer of San Antonio.

Appointed to the Texas Historical Records Advisory Board for a term to expire February 1, 2009, Chris LaPlante of Austin.

Rick Perry, Governor

TRD-200501892



THE ATTORNEY GENERAL

Under provisions set out in the Texas Constitution, the Texas Government Code, Title 4, §402.042, and numerous statutes, the attorney general is authorized to write advisory opinions for state and local officials. These advisory opinions are

requested by agencies or officials when they are confronted with unique or unusually difficult legal questions. The attorney general also determines, under authority of the Texas Open Records Act, whether information requested for release from governmental agencies may be held from public disclosure. Requests for opinions, opinions, and open records decisions are summarized for publication in the *Texas Register*. The attorney general responds to many requests for opinions and open records decisions with letter opinions. A letter opinion has the same force and effect as a formal Attorney General Opinion, and represents the opinion of the attorney general unless and until it is modified or overruled by a subsequent letter opinion, a formal Attorney General Opinion, or a decision of a court of record. You may view copies of opinions at <http://www.oag.state.tx.us>. To request copies of opinions, please fax your request to (512) 462-0548 or call (512) 936-1730. To inquire about pending requests for opinions, phone (512) 463-2110.

Opinions

Opinion No. GA-0321

Shirley J. Neeley, Ed.D.
Commissioner of Education
Texas Education Agency
1701 North Congress Avenue
Austin, Texas 78701-1494

Re: Whether an independent school district may enter into a 50-year lease with a private entity to use and improve the entity's land for school purposes in exchange for \$1.00 per year and the agreement to lease excess school district land to the private entity for 50 years (RQ-0292-GA)

SUMMARY

An independent school district is authorized to lease land from a private entity and to develop the land for school district purposes. An independent school district has implied authority to lease school land to a private entity, but in leasing school property the board of trustees may not (i) permit uses of the property that would interfere with the property's use for district purposes, or (ii) divest itself of the exclusive right to manage and control the property. A long-term exchange of school land for private land may be subject to section 272.001 of the Local Government Code, in which case the school district may be required to provide notice and accept bids.

Article III, section 52(a) of the Texas Constitution does not prohibit a school district from using public funds to construct buildings on leased property or from leasing school land to a private entity if the board of trustees determines that the expenditure or use of the thing of value serves a public purpose and places sufficient controls on the transaction to ensure that the public purpose is carried out.

Opinion No. GA-0322

The Honorable David T. Garcia
Brooks County Attorney
Post Office Box 557
Falfurrias, Texas 78355

Re: Whether a commissioners court or another elected official may continue to pay compensation to a suspended employee (RQ-0286-GA)

SUMMARY

Pursuant to section 152.011 of the Local Government Code, the county commissioners court sets the salary of county employees when it adopts the county budget. Having provided county officers with the resource of the established salary, the commissioners court is precluded from interfering with the county officer's use of that resource. Because of their significant "sphere of authority," county officers have the discretion to suspend their deputies and employees as well as the discretion to continue to compensate the deputies or employees they suspend.

A county official's discretion is bounded by the Texas Constitution. As a result, the county official must determine that a public purpose is served by the paid suspension and place sufficient controls on the compensation to ensure the public purpose is carried out to comply with article III, section 52 of the Texas Constitution.

Where there is no preexisting policy constituting a term of employment that provides for suspension with pay to county employees, paid suspension is gratuitous extra compensation prohibited by article III, section 53 of the Texas Constitution. Therefore, a county official does not have the authority to suspend an employee with pay unless the officer has previously adopted a policy allowing for paid suspension.

Opinion No. GA-0323

Mr. Reagan E. Greer
Executive Director
Texas Lottery Commission
Post Office Box 16630
Austin, Texas 78761-6630

Re: Whether the Lottery Commission may sell promotional items to the general public, Commission employees, or vendors with whom the Commission contracts (RQ-0287-GA)

SUMMARY

The Texas Lottery Commission lacks authority to sell promotional goods.

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-200501898

Nancy S. Fuller
Assistant Attorney General
Office of the Attorney General
Filed: May 10, 2005



PROPOSED RULES

Proposed rules include new rules, amendments to existing rules, and repeals of existing rules. A state agency shall give at least 30 days' notice of its intention to adopt a rule before it adopts the rule. A state agency shall give all interested persons a reasonable opportunity to

submit data, views, or arguments, orally or in writing (Government Code, Chapter 2001).

Symbols in proposed rule text. Proposed new language is indicated by underlined text. ~~[Square brackets and strikethrough]~~ indicate existing rule text that is proposed for deletion. "(No change)" indicates that existing rule text at this level will not be amended.

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 4. COOPERATIVE MARKETING ASSOCIATIONS

4 TAC §4.2

The Texas Department of Agriculture (the department) proposes an amendment to §4.2, concerning licensing of cooperative marketing associations. The amendment is proposed to make §4.2 consistent with the current agency process for issuing cooperative marketing association licenses.

David Kostroun, assistant commissioner for regulatory programs, has determined that for the first five-year period the proposed amendment is in effect there is no anticipated fiscal impact for state and local governments as a result of administering or enforcing the rule amendment, as proposed.

Mr. Kostroun also has determined that for each year of the first five years the proposed amendment is in effect, the public benefits anticipated as a result of administering and enforcing the section, as amended, will be to make the section consistent with current agency practice for the issuing of cooperative marketing association licenses, and to give interested members of the public correct information on the term of a cooperative marketing association license. There is no cost anticipated to micro-businesses, small businesses or individuals required to comply with the amendment.

Comments on the proposal may be submitted to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Texas Agriculture Code (the Code), §12.016, which provides the department with the authority to adopt rules as necessary for the administration of its powers and duties under the Code, including Chapter 52, relating to cooperative marketing associations.

The code that is affected by the proposal is the Texas Agriculture Code, Chapter 52.

§4.2. *Who May Obtain a License.*

(a) - (c) (No change.)

(d) Licenses expire one year from the date of issuance ~~[on staggered dates based on the licensee's fiscal year end]~~ or when ~~[until]~~ the association is dissolved or its charter is forfeited.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2005.

TRD-200501845

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: June 19, 2005

For further information, please call: (512) 463-4075



TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 33. STATEMENT OF INVESTMENT OBJECTIVES, POLICIES, AND GUIDELINES OF THE TEXAS PERMANENT SCHOOL FUND

19 TAC §33.35

The State Board of Education (SBOE) proposes an amendment to §33.35, concerning the Texas Permanent School Fund (PSF) guidelines for the custodian and securities lending agent. The section establishes the guidelines for the investment of cash collateral by the securities lending agent. The proposed amendment would update the guidelines for cash collateral investment in line with current market practices and standards.

The Texas Education Code, §7.102(c)(31), states that the SBOE may invest the PSF within the limits of the authority granted by the Texas Constitution, Article VII, §5, and TEC, Chapter 43. The rules in 19 TAC Chapter 33 establish investment objectives, policies, and guidelines for the PSF. Section 33.35 includes the guidelines for the investment of cash collateral by the securities lending agent.

The proposed amendment to 19 TAC §33.35 would add asset backed commercial paper and asset backed securities to the permissible investment list and extend the maturity of investments to 13 months from 12 months. These changes would bring PSF guidelines in line with 2a7 funds, which represent a large liquid and investable pool of cash. The proposal would also reduce the collateralization for corporate debt collateral from 110% to 105%. In addition, the proposal includes clarifications that would specify the requirement of ratings by Moody's Investor Service and Standard and Poor's Corporation for reverse repurchase agreements and foreign sovereign debt and modify investment parameters by clarifying the definition of "Tier 1" credit quality.

Holland Timmins, executive administrator and chief investment office of the Texas PSF, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for state government as a result of enforcing or administering the section. The proposed amendment clarifies and expands language to allow for cash collateral investments in asset backed commercial paper and asset backed securities. The specific fiscal impact of these changes cannot be determined because cash markets change daily. The objective of the amendment, however, is to increase the investable pool and thus improve income.

Mr. Timmins has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be the increase of income to the PSF. The distribution of the PSF will flow to the school districts and reduce the tax burden to the public and the state of Texas. The proposed amendment is projected to increase the return on the securities lending portfolio when implemented. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §7.102(c)(31), which authorizes the State Board of Education to invest the PSF within the limits of the authority granted by the Texas Constitution, Article VII, §5, and the Texas Constitution, Article VII, §5(d).

The amendment implements the Texas Education Code, §7.102(c)(31), and the Texas Constitution, Article VII, §5(d).

§33.35. Guidelines for the Custodian and the Securities Lending Agent.

Completing custodial and security lending functions in an accurate and timely manner is necessary for effective investment management and accurate records.

(1) A custodian shall have the following responsibilities regarding the segments of the funds for which the custodian is responsible.

(A) Provide complete custody and depository services for the designated accounts.

(B) Provide for investment of any cash on a daily basis to avoid uninvested amounts.

(C) Implement the investment actions in a timely and effective manner as directed by the investment managers.

(D) Collect all realizable income and principal and properly report the information on the periodic statements to the Texas Permanent School Fund (PSF) investment staff, the investment managers, or other appropriate parties.

(E) Provide monthly and annual accounting statements, as well as on-line, real-time accounting, that includes all transactions. Accounting shall be based on accurate security values for cost and

market value and provided within a time frame acceptable to the State Board of Education (SBOE).

(F) Report to the PSF investment staff situations in which security pricing is either not possible or subject to considerable uncertainty.

(G) Distribute all proxy voting materials in a timely manner.

(H) Provide research and assistance to the SBOE and the PSF investment staff on all issues related to accounting and administration.

(I) Confirm that the depth of resources and personnel associated with the designated funds are comparable to those of the nation's leading custodial banks.

(2) A securities lending agent for the PSF shall have the following responsibilities.

(A) Provide complete transaction reporting for the designated funds.

(B) Provide a monthly accounting, as well as on-line, real-time accounting for securities lending transactions, based on accurate security values.

(C) Report to the PSF investment staff any irregular situation that is outside the standard of practice for securities lending or inconsistent with the provisions of the securities lending agreement.

(D) Implement a securities lending program for the PSF in a manner that does not impair any rights of the PSF by virtue of PSF ownership in securities.

(E) As requested, provide research and assistance to the SBOE and the PSF investment staff on all issues related to accounting and administration.

(F) Provide indemnification to the PSF satisfactory to the SBOE in the event of default on securities lending transactions.

(G) Fully disclose all revenues and other fees associated with the securities lending program.

(H) Comply with restrictions on types of securities lending transactions or eligible investments of cash collateral or any other restrictions imposed by the SBOE or the PSF investment staff. Cash collateral reinvestment guidelines must meet the following standards.

(i) Permissible investments.

(I) U.S. Government and U.S. Agencies, under the following criteria:

(-a-) any security issued by or fully guaranteed as to payment of principal and interest by the U.S. Government or a U.S. Government Agency or sponsored Agency, and eligible for transfer via Federal Reserve Bank book entry, Depository Trust Company book entry, and/or Participants Trust Company book entry;

(-b-) maximum 397-day [~~one-year~~] maturity on fixed rate;

(-c-) maximum 397-day [~~one-year~~] maturity on floating rate, with maximum reset period of 90 days; and

(-d-) no maximum dollar limit.

(II) Bank obligations, under the following criteria:

(-a-) time deposits with maximum 60-day maturity on fixed rate or floating rate, with maximum reset period of 60 days;

(-b-) negotiable Certificates of Deposit with maximum 397-day ~~[one-year]~~ maturity on fixed rate or floating rate, with maximum reset period of 90 days;

(-c-) bank notes with maximum 397-day ~~[one-year]~~ maturity on fixed rate or maximum 397-day ~~[one-year]~~ maturity on floating rate, with maximum reset period of 90 days;

(-d-) bankers acceptances with maximum 45-day maturity;

(-e-) banks with at least \$25 billion in assets with a short-term rating of "Tier 1" as defined in clause (ii)(IV) of this subparagraph. In addition, placements can be made in branches within the following countries:

(-1-) Canada;

(-2-) France;

(-3-) United Kingdom; and

(-4-) United States; and

(-f-) dollar limit maximum per institution of 5.0% of investment portfolio at time of purchase.

(III) Commercial paper, under the following criteria:

(-a-) dollar limit maximum per issuer of 5.0% of investment portfolio at time of purchase including any other obligations of that issuer as established in subclause (II)(-d-) of this clause. If backed 100% by bank Letter of Credit, then dollar limit is applied against the issuing bank;

(-b-) must be rated "Tier 1" as defined in clause (ii)(IV) of this subparagraph; and

(-c-) maximum 397 ~~[270]~~-day maturity.

(IV) Asset backed commercial paper, under the following criteria:

(-a-) dollar limit maximum per issuer of 5.0% of investment portfolio;

(-b-) must be rated "Tier 1" as defined in clause (ii)(IV) of this subparagraph; and

(-c-) maximum 397-day maturity.

(V) Asset backed securities, under the following criteria:

(-a-) maximum 397-day weighted average life on fixed rate;

(-b-) maximum 397-day weighted average life on floating rate, with maximum reset period of 90 days; and;

(-c-) rated Aaa and AAA by Moody's Investor Service and Standard and Poor's Corporation at time of purchase. One AAA rating may suffice if only rated by one Nationally Recognized Securities Rating Organization (NRSRO).

(VI) ~~[(4V)]~~ Corporate debt (other than commercial paper), under the following criteria:

(-a-) must be senior debt;

(-b-) maximum 397-day ~~[one-year]~~ maturity on fixed rate;

(-c-) maximum 397-day ~~[one-year]~~ maturity on floating rate, with maximum reset period of 90 days;

(-d-) issuers or guarantor's short-term obligations must be rated "Tier 1" as defined in clause (ii)(IV) of this subparagraph; and

(-e-) dollar limit maximum per issuer of 5.0% of investment portfolio at time of purchase, including any other obligations of that issuer.

(VII) ~~[(4V)]~~ Reverse repurchase agreements, under the following criteria:

(-a-) counterparty must be "Tier 1" rated as defined in clause (ii)(IV) of this subparagraph or be a "Primary Dealer" in Government Securities as per the New York Federal Reserve Bank;

(-b-) underlying collateral may be any security permitted for direct investment;

(-c-) lending agent or a third party custodian must hold collateral under tri-party agreement;

(-d-) collateral must be marked to market daily and maintained at the following margin levels;

(-1-) U.S. Government, U.S. Government Agency, sponsored Agency, International Organization at 100%;

(-2-) Certificate of Deposits, Bankers Acceptance, bank notes, commercial paper at 102% under one year to maturity and rated at least "Tier 1" as defined in clause (ii)(IV) of this subparagraph; and

(-3-) corporate debt (other than commercial paper) at 105% ~~[(110%)]~~ rated at least AA2/AA or better by Moody's Investor Service and Standard and Poor's Corporation at time of purchase;

(-e-) due to daily margin maintenance, dollar limits and maturity limits of underlying collateral are waived, except with respect to the maturity limit in subclause (II)(-d-) of this clause;

(-f-) maximum 180-day maturity; and

(-g-) dollar limit for total reverse repurchase agreements is the greater of \$300 million or 15% of value of cash collateral portfolio with one counterparty at time of purchase.

(VIII) ~~[(4V)]~~ Foreign sovereign debt, under the following criteria:

(-a-) any security issued by or fully guaranteed as to payment of principal and interest by a foreign government whose sovereign debt is rated AA2/AA or better by Moody's Investor Service and Standard and Poor's Corporation at time of purchase. Securities must be delivered to Lending Agent or a third party under a Tri-Party agreement;

(-b-) dollar limit maximum per issuer or guarantor of 2.5% of investment portfolio; and

(-c-) maximum maturity of 397 days ~~[one year]~~.

(IX) ~~[(4V)]~~ Short Term Investment Fund (STIF) and/or Registered Mutual Funds, under the following criteria:

(-a-) funds must comprise investments similar to those that would otherwise be approved for securities lending investment under the provisions of this subparagraph, not invest in derivatives, and not re-hypothecate assets;

(-b-) lender must approve each fund in writing and only upon receipt of offering documents and qualified letter; and

(-c-) fund must have an objective of a constant share price of one dollar.

(ii) Investment parameters.

(I) Maximum weighted average maturity of investment portfolio must be 180 days.

(II) Maximum weighted average interest rate exposure of investment portfolio must be 60 days.

(III) All investments must be U.S. dollar-denominated.

(IV) "Tier 1" credit quality is defined as the highest short-term rating category ~~[investment grade]~~ by the following

NRSROs [Nationally Recognized Securities Ratings Organizations (NRSRO)]:

- (-a-) Standard & Poor's;
- (-b-) Moody's Investors Service;
- (-c-) Fitch Investors Service; and
- (-d-) Duff & Phelps, LLC.

(V) At time of purchase all investments must be rated in the highest short-term numerical category by at least two NRSROs, one of which must be either Standard & Poor's or Moody's Investors Service.

(VI) Issuer's ratings cannot be on negative credit watch at the time of purchase.

(VII) Mortgage [Asset backed securities and mortgage] backed securities are not permitted.

(I) Provide a copy of the investment policy governing the custodian's securities lending program, as amended, to the PSF investment staff.

(J) Confirm that the depth of resources and personnel associated with the designated funds are comparable to those of the nation's leading securities lending agents.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 5, 2005.

TRD-200501805

Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497



CHAPTER 111. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR MATHEMATICS SUBCHAPTER B. MIDDLE SCHOOL

19 TAC §111.21

The State Board of Education (SBOE) proposes an amendment to §111.21, concerning the Texas Essential Knowledge and Skills (TEKS) for middle school mathematics. The section establishes the implementation of middle school mathematics, Grades 6-8. The proposed amendment would establish in rule an implementation date of the 2006-2007 school year for the refined and aligned middle school mathematics TEKS. A corresponding amendment to §111.31 relating to implementation of high school mathematics TEKS is also proposed in this issue.

The SBOE recently concluded the review process for the secondary mathematics TEKS in the areas of mathematics, Grades 6-8 (including Grade 6 Spanish mathematics); Algebra I and II; Geometry; Precalculus; and Mathematical Models with Applications. The review process included review of the TEKS by a work group of teachers, central office staff, and university personnel. After the work group refined and aligned the secondary mathematics TEKS, the draft revisions were placed on the Texas Education Agency (TEA) web site in the form of a survey to collect

feedback from the public beginning in mid-May 2004. A summary of the survey results was provided to the SBOE at the July 2004 meeting.

The draft revisions were also provided to a review panel consisting of three highly regarded mathematics experts. At the September 2004 meeting, the SBOE was presented with a description of the expert reviewers' comments on the alignment and refinement of the TEKS. The SBOE approved the proposed amendments to 19 TAC Chapter 111, Subchapters B and C, for first reading and filing authorization at the November 2004 meeting. Subsequent to the November meeting, the TEA staff placed a second survey on the TEA website to collect feedback regarding implementation. The survey results, which consisted primarily of responses from teachers and other school district personnel, were shared with the SBOE during the February 2005 meeting. Results indicated a preference for a fall 2006 implementation date rather than implementation beginning in the 2005-2006 school year.

During the February 2005 meeting, the SBOE adopted amendments that refine and align the TEKS for secondary mathematics and specified that implementation begin with the 2006-2007 school year. Accordingly, language to amend applicable sections to reflect this implementation date is proposed.

The proposed amendment to 19 TAC Chapter 111, Subchapter B, §111.21, would establish in rule an implementation date of the 2006-2007 school year for the refined and aligned secondary mathematics TEKS, as adopted by the SBOE in February 2005.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Barnes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be providing schools a full year for training and preparation prior to actual implementation of the newly refined and aligned secondary mathematics TEKS. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §7.102, which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum.

The amendment implements the Texas Education Code, §§7.102, 28.002, and 28.025.

§111.21. Implementation of Texas Essential Knowledge and Skills for Mathematics, Grades 6-8.

The provisions of this subchapter shall be implemented by school districts beginning with the 2006-2007 school year. [~~September 1, 1998, and at that time shall supersede §75.27(g) and §75.43(a) and (b) of this title (relating to Mathematics):~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cristina De La Fuente-Valadez

Director, Policy Coordination

Texas Education Agency

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For further information, please call: (512) 475-1497



SUBCHAPTER C. HIGH SCHOOL

19 TAC §111.31

The State Board of Education (SBOE) proposes an amendment to §111.31, concerning the Texas Essential Knowledge and Skills (TEKS) for high school mathematics. The section establishes the implementation of high school mathematics courses. The proposed amendment would establish in rule an implementation date of the 2006-2007 school year for the refined and aligned high school mathematics TEKS. A corresponding amendment to §111.21 relating to implementation of middle school mathematics TEKS is also proposed in this issue.

The SBOE recently concluded the review process for the secondary mathematics TEKS in the areas of mathematics, Grades 6-8 (including Grade 6 Spanish mathematics); Algebra I and II; Geometry; Precalculus; and Mathematical Models with Applications. The review process included review of the TEKS by a work group of teachers, central office staff, and university personnel. After the work group refined and aligned the secondary mathematics TEKS, the draft revisions were placed on the Texas Education Agency (TEA) web site in the form of a survey to collect feedback from the public beginning in mid-May 2004. A summary of the survey results was provided to the SBOE at the July 2004 meeting.

The draft revisions were also provided to a review panel consisting of three highly regarded mathematics experts. At the September 2004 meeting, the SBOE was presented with a description of the expert reviewers' comments on the alignment and refinement of the TEKS. The SBOE approved the proposed amendments to 19 TAC Chapter 111, Subchapters B and C, for first reading and filing authorization at the November 2004 meeting. Subsequent to the November meeting, the TEA staff placed a second survey on the TEA website to collect feedback regarding implementation. The survey results, which consisted primarily of responses from teachers and other school district personnel, were shared with the SBOE during the February 2005 meeting. Results indicated a preference for a fall 2006 implementation date rather than implementation beginning in the 2005-2006 school year.

During the February 2005 meeting, the SBOE adopted amendments that refine and align the TEKS for secondary mathematics and specified that implementation begin with the 2006-2007 school year. Accordingly, language to amend applicable sections to reflect this implementation date is proposed.

The proposed amendment to 19 TAC Chapter 111, Subchapter C, §111.31, would establish in rule an implementation date of the 2006-2007 school year for the refined and aligned secondary mathematics TEKS, as adopted by the SBOE in February 2005. The amendment would supersede implementation dates that are no longer necessary.

Susan Barnes, associate commissioner for standards and programs, has determined that for the first five-year period the amendment is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the amendment.

Dr. Barnes has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be providing schools a full year for training and preparation prior to actual implementation of the newly refined and aligned secondary mathematics TEKS. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the amendment.

Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Policy Coordination Division, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-0028. All requests for a public hearing on the proposed amendment submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 15 calendar days after notice of the proposal has been published in the *Texas Register*.

The amendment is proposed under the Texas Education Code, §7.102, which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to by rule identify the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating textbooks and addressed on the assessment instruments; and §28.025, which authorizes the SBOE to by rule determine curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum.

The amendment implements the Texas Education Code, §§7.102, 28.002, and 28.025.

§111.31. Implementation of Texas Essential Knowledge and Skills for Mathematics, Grades 9-12.

The provisions of this subchapter shall be implemented beginning with the 2006-2007 school year. This implementation date shall supersede any other implementation dates found in this subchapter. [~~September 1, 1998, and at that time, shall supersede §75.63(e)-(g) of this title (relating to Mathematics):~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Cristina De La Fuente-Valadez
Director, Policy Coordination
Texas Education Agency
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TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 105. ALTERNATIVE DENTAL HYGIENE TRAINING PROGRAM

22 TAC §§105.1 - 105.4

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the State Board of Dental Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The Texas State Board of Dental Examiners (Board) proposes the repeal of 22 TAC Chapter 105, §§105.1 - 105.4, concerning the Alternative Dental Hygiene Training Program.

These regulations arise from Texas Occupations Code §256.0531, which, via a confusingly duplicative use of terminology, requires that the Board adopt and develop an "Alternative Dental Hygiene Training Program" that would govern "Alternative Dental Hygiene Training Programs" developed and submitted by dentists or dental hygienists wishing to provide such training. In turn, House Bill 3507, §3.03, 77th Legislature, 2001, which enacted §256.0531, also provides that "the program" (presumably meaning any program developed and submitted to the Board) must be accredited by the Commission on Dental Accreditation by December 31, 2004, or the "program" (the Board's program) expires.

As no programs were ever so accredited, any programs and therefore the Board's program therefore expired on December 31, 2004.

Bobby D. Schmidt, Executive Director, Texas State Board of Dental Examiners has determined that there will be no fiscal implications for local or state government, anticipated economic cost to persons, anticipated local employment impact, public benefit, fiscal implications for small or large businesses, or adverse economic impacts on small or large businesses as a result of the repeal.

Comments on the proposal may be submitted to Bobby D. Schmidt, M.Ed., Executive Director, Texas State Board of Dental Examiners, 333 Guadalupe, Tower 3, Suite 800, Austin, Texas 78701, (512) 475-1660. To be considered, all written comments must be received by the Texas State Board of Dental Examiners no later than 30 days from the date that the proposal is published in the *Texas Register*.

The repeal is proposed under Texas Government Code §§2001.021, et seq; Texas Civil Statutes, Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties, and House Bill 3507, §3.03, 77th Legislature, 2001, which provides for the expiration of the Alternative Dental Hygiene Training Program.

The proposed repeal affects Title 3, Subtitle D of the Texas Occupations Code and Texas Administrative Code, Title 22, Chapters 101 - 125.

§105.1. *Definitions.*

§105.2. *Licensure Qualifications.*

§105.3. *Requirements for Alternative Dental Hygiene Training Programs.*

§105.4. *Program Instructors.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501842

Fread Houston

General Counsel

State Board of Dental Examiners

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For further information, please call: (512) 475-0987

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 341. LICENSE RENEWAL

22 TAC §341.1

The Texas Board of Physical Therapy Examiners proposes amendments to §341.1, concerning Requirements for Renewal. The changes will update the rule to reflect the addition of the online renewal application and related changes to board procedures.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the assurance that licensees have clear guidance on what to expect regarding renewal procedures. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by these amendments.

§341.1. *Requirements for Renewal.*

(a) Biennial renewal. Licensees are required to renew their licenses every two years by the end of the month in which they were originally licensed. A licensee may not provide physical therapy services

without a current license or renewal certificate in hand. If a license expires after all required items are submitted, but before the licensee receives the renewal certificate, the licensee may not provide physical therapy services.

(b) General requirements. The renewal application is not complete until all required items are received by the board. The components required for license renewal are:

(1) a signed renewal application form or the online equivalent, documenting completion of board-approved continuing education (CE), as described in §341.2 of this title, concerning Continuing Education;

(2) the renewal fee, and any late fees which may be due; and

(3) a passing score on the jurisprudence examination.

(c) Notification of license expiration. The board will send notification [mail an application] to each licensee at least 30 days prior to the license expiration date. The licensee bears the responsibility for ensuring that the license is renewed. [~~Licensees should contact the board if they do not receive a renewal application 30 days prior to the expiration date.~~]

(d) Late renewal. A renewal application is late if all required items are not postmarked prior to the expiration date of the license. Licensees who do not submit all required items prior to the expiration date are subject to late fees as described.

(1) If the license has been expired for 90 days or less, the late fee is one-half of the examination fee for the license.

(2) If the license has been expired for more than 90 days but less than one year, the late fee is equal to the examination fee for the license. Licensees who are more than 90 days late in renewing a license are not included in the audit, and must submit documentation of continuing education at time of renewal.

(3) If the license has been expired for one year or longer, the person may not renew the license. To obtain a new license, the applicant must take and pass the national examination again and comply with the requirements and procedures for obtaining an original license set by §329.1 of this title (relating to General Licensure Procedure).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501811

John P. Maline

Executive Director, Executive Council of Physical Therapy and Occupational Therapy Examiners

Texas Board of Physical Therapy Examiners

Earliest possible date of adoption: June 19, 2005

For further information, please call: (512) 305-6900



22 TAC §341.20

The Texas Board of Physical Therapy Examiners proposes amendments to §341.20, concerning Licensees Called to Active Military Service. The changes would extend the waiver of continuing education to all licensees who are called to active

duty while serving in the military reserves, and clarifies how the waiver will be applied.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline also has determined that, for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be the assurance that licensees in the reserves who are called to active military service will not be penalized for that service. There will be no effect on small businesses, and no economic cost to persons having to comply is anticipated.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nhurter@mail.capnet.state.tx.us.

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Occupations Code is affected by these amendments.

§341.20. Licensees Called to Active Military Service.

(a) Renewal. A licensee who is a member of the reserves and called to active military service must submit renewal fees within 90 days after active service has ended if their license expired within the months of active service. The regular renewal month will not change. The licensee must submit official documentation [evidenece] of active service and its inclusive dates.

(b) Continuing education units (CEUs).

(1) A licensee who is a member of the reserves and called to active military service will have his/her CEUs prorated in proportion to the number of months of documented active service.

(2) A licensee whose license expires during the period of active service will be given a complete waiver of CEUs for the past renewal period, and CEUs for months of documented active service in the current renewal cycle will be prorated.

(3) All licensees must take two hours of board-approved programs in ethics and professional responsibility as part of their total CE requirement, which cannot be prorated.

~~[(b) Continuing education units (CEUs): A licensee who is a member of the reserves and called to active military service whose license expired during the period of active service will be given a waiver of CEUs. The regular renewal month will not change. The CEUs for the following biennial renewal will be prorated, i.e., eliminating percentages of required CEUs for the months of active service.]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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John P. Maline
Executive Director, Executive Council of Physical Therapy and
Occupational Therapy Examiners
Texas Board of Physical Therapy Examiners
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For further information, please call: (512) 305-6900

PART 34. TEXAS STATE BOARD OF SOCIAL WORKER EXAMINERS

CHAPTER 781. SOCIAL WORKER LICENSURE

The Texas State Board of Social Worker Examiners proposes the repeal of §§781.101, 781.102, 781.201 - 781.217, 781.301 - 781.315, 781.401, 781.402, 781.501 - 781.514, 781.601 - 781.610, 781.701 - 781.707, 781.801 - 781.807 and new §§781.101, 781.102, 781.201 - 781.217, 781.301 - 781.317, 781.401 - 781.418, 781.501 - 781.515, 781.601 - 781.610, 781.701 - 781.707, and 781.801 - 781.807, concerning the licensing of social workers.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 781.101, 781.102, 781.201 - 781.217, 781.301 - 781.315, 781.401, 781.402, 781.501 - 781.514, 781.601 - 781.610, 781.701 - 781.707, and 781.801 - 781.807 have been reviewed and the board has determined that the reasons for adopting the sections continue to exist in that rules concerning the licensing and regulation of social workers are still needed; however, the rules will be repealed and proposed as new rules as described in this preamble.

The proposed repeals and new sections are a result of comprehensive rule review undertaken by the board, identified stakeholder groups and the board's staff as a result of the passage of Senate Bill (SB) 810 in the 78th Regular Session of the Texas Legislature. This legislation was the result of a taskforce of stakeholders groups and the board in response to House Bill (HB) 3365 of the 77th Regular Session of the Texas Legislature regarding the independent practice of social work. SB 810 created new categories of social worker licensure, abolishing the Social Worker Associate category, a statute of limitations on complaints and modified requirements for board membership based on licensing categories and the creation of independent practices status for all levels of licensure.

In general, the board and stakeholder group representatives reviewed each section and proposed the repeal, readoption or revision of each section in order to ensure appropriate subchapter, section and paragraph organization; to modify rules in accordance with legislative changes impacting social work practice; to ensure clarity and improve spelling, grammar and punctuation; to ensure that the rules reflect current legal and policy considerations; to ensure accuracy of legal citations, eliminate unnecessary catch-titles, and eliminate repetitive use of long titles for terms that have been assigned short titles by definition; to delete repetitive, obsolete, unenforceable or unnecessary language; to improve draftsmanship; and to make the rules more understandable and usable.

The following changes are proposed relating to the repeal and readoption of Subchapter A (relating to General Provisions).

No changes are proposed to §781.102(1) - (5). These definitions are determined by review as necessary to the regulation of social work and are proposed for readoption.

Regarding §781.102(6) "Association of Social Work Board (ASWB)" is proposed as necessary to provide definition of the association which is owner of the national exam utilized by the board for licensure eligibility. The definition provides guidance to the public, applicants and stakeholders as to the meaning of the term.

A substantial revision was made to the following terms defined in §781.102: Client; Confidential Information; and Exploitive Behavior. The revisions better define the terms. The definitions provides better guidance and understanding to the public, applicants, and stakeholders as to the meaning of the terms.

A substantial revision to the definition of "Clinical Social Work" is necessary and definition §781.102(10) is proposed. The new definition is more in line with national standards for the definition of clinical social work and provides better guidance and understanding to the public, applicants, licensees and stakeholders on clinical social work in Texas.

New definitions of the following terms are proposed in §781.102: Clinical Supervision; Completed Application; Contested Case; Counseling; Consultation; Continuing Education; Direct Practice; Endorsement; Examination; Exploitation; Family System; Formal Hearing; Group Supervision; Health Care Professional; Home Study; Independent Practice; Indirect Practice; Individual Supervision; Investigator; LBSW; LCSW; Party; Person; Pleading; Psychotherapy; Reciprocity; Rules; Social Work Case Management; Social Work Practice; Supportive Counseling; Supervisor; Supervision Hour; Telepractice; Texas Open Meetings Act; Texas Public Information Act; and Waiver. The new definitions clarify clinical terms and provides better guidance and understanding to the public, licensees, applicants and stakeholders as to the meaning of the term.

The definitions of the following terms in §781.102 were renumbered to maintain alphabetical order: Detrimental to the Client; Dual Relationship; Flagrant; Fraud; Full-time Experience; License; Licensee; LMSW; LMSW-ACP; LMSW-AP; LSW; Non-clinical Social Work; Part-time; Persistently; Recognition; Sexual Contact; Social Worker; Supervision; SWA; and Termination.

The definition of the "Department of State Health Services" is proposed to be changed due to the change of name from the "Texas Department of Health" and is renumbered alphabetically at §781.102(19).

The definition of "Private Independent Practice" is repealed as part of the creation of independent practice at all levels of licensure.

The definitions of "Professional Social Work Practice" and "Sexually Exploitive Behavior" are repealed and replaced in §781.102, respectively by the new definitions of "Social Work Practice" and "Sexual Exploitation." The new definitions clarify the terms and provides better guidance and understanding to the public, licensees, applicants, and stakeholders as to the meaning of the term.

The following changes are proposed relating to the repeal and readoption of Subchapter B (relating to The Board).

No substantive changes are proposed to §§781.201 - 781.216. These definitions are determined by review as necessary to the regulation of social work and are proposed for readoption. The sections and format were standardized.

Section 781.217 is proposed for modification based on new fees and categories of licensure and the requirement for biennial renewal based on the passage of HB 2292 in the 78th Legislative Session, Regular Session, 2003.

Section 781.217(2), (3), (4), (5), and (9) are proposed to reflect the new categories of licensure and biennial renewal of licenses.

Section 781.217(11) and (12) are proposed for the written verification of licenses and specialty licenses. Members of the public, licensees and stakeholder groups can verify a license without cost on the board's Internet website.

Section 781.217(16) and (17) are proposed to insure compliance with the collection of mandated fees required by state law.

Section 781.217(18) is proposed for better tracking of those individuals providing approved supervisor services and to provide regular contact with the board regarding those services.

Section 781.217(19) is proposed as part of the requirements of §781.313 of this title.

Section 781.217(20) is proposed as part of the process for approval to sit for re-examination after failing the required exam. The fee will provide better guidance to ensure only those applicants who are eligible will be able to sit for re-examination.

Section 781.217(21) is proposed as a new fee as part of the process to apply for temporary licensure.

The following changes are proposed relating to the repeal and readoption of Subchapter C (relating to Licenses and Licensing Process). Several new subsections are proposed and a reformatting of the Subchapter is proposed for better paragraph outline and structure.

Section 781.301(a)(1) and (3) create requirements for licensure. The section outlines the changes of required supervise experience from being tracked in months to hours and the required supervision to be received for the licensed clinical social worker license and the licensed master social worker-advanced practitioner recognition. The section also establishes time frames in which the supervised experience must occur.

Section 781.301(a)(4) reflects the change in category from licensed social worker to licensed baccalaureate social worker.

Section 781.301(a)(5) is repealed, as the social worker associate (SWA) category is no longer included by statute (Occupations Code, Chapter 505).

Section 781.301(a)(5) reflects the changes in the license categories as well as the authorization for licensees recognized for independent practice to engage in such practice. The section also defines the independent practice of an LCSW, LBSW, LMSW and LMSW-AP.

Section 781.302 clarifies the process for supervision and reflects the new license categories.

New §781.303 is proposed to establish the criteria for achieving the independent practice recognition including supervision and experience. The section also establishes time frames in which the supervision must be completed. The section also establishes the criteria to be used by the board in identifying independent practice.

New §781.304 concerns the recognition of supervisors at all levels of licensure. The process outlines the requirements to become an approved supervisor and the requirements of the supervisory process. The section clarifies the supervision process for licensees and applicants. New to this process is the requirement that all approved supervisors complete the approved supervisor-training course prior to being approved by the board. Additionally the approved supervisor will pay the required fee.

Section 781.305 proposes changes to reduce the time between when an applicant applies and when the application lapses to 12 months. This change reflects more national standards with social worker licensing application and national testing guidelines. The section also reflects the changes in licensing categories.

Section 781.311 reflects the changes in license categories.

Section 781.312(c) proposes that an applicant who fails the exam must wait the required timeframe and petition the board for reexamination.

Section 781.313 outlines changes to the Alternative Method of Examining Competency Program. These changes include a reduction in fail scores from 10 points of passing to 5 points of passing. The change also outlines the requirements for the professional portfolio to be created as part of the program participation. Additionally, minimum and maximum time frames for program participation are established.

The following changes are proposed relating to the repeal and readoption of Subchapter D (relating to Code of Conduct and Professional Standards of Practice). Several new subsections are proposed and a reformatting of the Subchapter is proposed for better paragraph outline and structure. The renaming of §781.401 and complete revision of §781.402, change the current litany of standards to better define subsections clarifying the standards of practice.

It is proposed to change the title of Subchapter D to "Code of Conduct and Professional Standards of Practice" in lieu of "Code of Ethics and Professional Standards of Practice" to better reflect the actions of the subchapter along with other proposed changes.

Section 781.401 will, by the change of name to "Code of Conduct," distinguish the board's code apart from the "Code of Ethics" of any professional, public, licensee, or stakeholder group. The term clarifies the section and provides better guidance and understanding to the public, licensees, applicants and stakeholders as to the meaning of the term. No change to content of the code is proposed.

New §781.402 is titled the "Standards of Practice of Professional Social Work." The section clarifies the practice of social work at each category of licensure. The section also repeats the definitions of independent practice and private practice as proposed in §781.102 to assist the public, licensees and stakeholders in their meaning in relation to the standards of practice of professional social work.

New §781.403 regards the general standards of social work practice. The section provides general standards for practice of social work at all levels and in all environments.

New §781.404 regards the relationships between social workers and clients. The section defines the length of time client records shall be retained and places structure and limits on the relationships between social workers and their clients.

New §781.405 defines sexual misconduct. The section clarifies the prohibition of sexual relationship between social workers and clients and provides requirements to report such actions in accordance with state law.

New §781.406 regards professional representation. The section clarifies the actions of fraud or deceptive or misleading services of social workers.

New §781.407 regards the use of diagnostic devices aiding in the assessment, diagnosis and treatment of clients.

New §781.408 defines the use of alcohol and drugs in the scope of professional practice of social work.

New §781.409 regards the client record and the retention of the client record. The section better defines the responsibility of the social worker regarding the creation, maintenance and retention of client records.

New §781.410 regards billing and financial relationships. The section clarifies the fiduciary relationship of social work practice and the responsibilities of social workers in billing practices.

New §781.411 regards client confidentiality. The section clarifies the social workers responsibility in complying with confidentiality requirements of various laws and practice standards. The section also clarifies reporting requirements regarding child abuse, abuse of elderly or disable persons and sexual exploitation by a mental health services provider. The section further clarifies opportunities to report to medical or law enforcement personnel the probability of imminent harm or danger in compliance with state law.

New §781.412 regards the relationship between licensees and the board. The section requires reports to the board and timeframes for those reports.

New §781.413 regards assumed names. The section clarifies the use of business or agency names used in the creation of practice of social work.

New §781.414 regards consumer information. The section mandates information to be provided to clients of social workers by the social work and the board for the purpose of complaints.

New §781.415 regards the requirement to display the license of the social worker. The section restricts the displaying or copying of a license and places the responsibility of use or misuse of a copied license on the licensee.

Section 781.416 regards advertising and announcements related to services of social workers. The section clarifies statements used in advertisements of social worker regarding their professional services. The section requires the use of license titles in all advertising or announcements of professional services.

Section 781.417 regards research and publications. The section establishes guidance regarding the use of clients in scholarly research or publications required credit for authorship.

New §781.418 regards the provision of court ordered home studies or custody evaluations. The section clarifies the social workers role in such evaluations and maintenance of copies of such evaluations. The section further clarifies restrictions on the performance of such evaluations.

The following changes are proposed relating to the repeal and readoption of Subchapter E (relating to License Renewal and Continuing Education). Several new subsections are proposed

and a reformatting of the Subchapter is proposed for better paragraph outline and structure.

Section 781.501 clarifies the requirement of biennial renewal in compliance with state law in §781.501(a).

Section 781.501(i) establishes that a license must be in good standing before it can be upgraded to a different category of licensure.

Section 781.508 is related to changes from continuing education units to continuing education hours to simplify the mathematics of counting continuing education credits. The section also clarifies the number of hours needed for continuing education during biennial renewal cycle.

Section 781.509 concerns types of acceptable continuing education and clarifies the types of continuing education acceptable for the renewal of a license.

Section 781.510 relates to what is not acceptable as continuing education for the renewal of a license.

Section 781.511 relates to approval of continuing education sponsors. The section clarifies the requirements to become and remain an approved sponsor of continuing education. The sections further clarifies the responsibility of the sponsor in provision of continuing education to licensees and the reporting of the completion of the continuing education to the licensee and the board. The section also clarifies the retention of records related to continuing education by approved sponsors.

New §781.512 regards the removal of an approved continuing education sponsor and the sponsor's right of due process.

Section 781.513 regards continuing education approved by another board and its possible acceptance as social work continuing education. This section assists those social workers working in multi-professional or non-traditional settings of social work practice.

Section 781.514 clarifies credit hours granted and the maximum hours to be received in any single activity of continuing education.

The following changes are proposed relating to the repeal and readoption of Subchapter F (relating to Complaints and Violations). New rules are proposed and a reformatting of the Subchapter is proposed for better paragraph outline and structure.

Section 781.603 relates to complaint procedures. Section 781.603(c) establishes a statute of limitations on the filing of a complaint in accordance with SB 810 passed in the 78th Regular Session of the Texas Legislature. The rule establishes a 5-year date from termination for the filing of the complaint.

Section 781.603(d) relates to complaint procedures. The rule establishes the right of the board to waive the statute of limitations in complaints of egregious acts or continuing threats to public health and safety.

Changes are proposed relating to the repeal and readoption of Subchapter G (relating to Formal Hearings) and Subchapter H (relating to Sanction Guidelines). No new rules are proposed. The proposed changes include a reformatting of the Subchapters for better paragraph outline and structure.

Andrew T. Marks, LMSW, Executive Director, has determined that for the first five years the sections are in effect, there will be fiscal implications as a result of enforcing or administering the sections as proposed. The effect on state government will

be an increase in revenue of \$563,488 for the first calendar year due to two-year license requirement. Additionally, an increase of \$37,680 will result from the fees generated from the temporary license, supervisor approval and AMEC fees. For year two, there will be an estimated increase of \$56,348 due to the two-year license fee. An additional \$6,750 will result from the fees generated from the temporary license, supervisor approval and AMEC fees. It cannot be determined whether, if adopted, there would be fiscal implications for state or local governments as it is unknown if these entities pay any of the required fees for their employees.

Mr. Marks has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be to ensure the appropriate regulation of social workers, continue to identify competent practitioners to ensure public safety, health and welfare and to ensure compliance of eligibility criteria and settings in which licensed social workers can work. There will be an economic impact to individuals who are required to comply with the rules imposing fees mandated by statute. There is no cost for small business or micro-business as fees unless such businesses pay the licensing fees of their employees. Applicants and licensees will be required to pay additional fees for processing applications and renewal applications through Texas Online and for funding the Office of Patient Protection. There is anticipated impact on local employment.

Comments on the proposed rule changes may be submitted to Andrew T. Marks, LMSW, Executive Director, Texas State Board of Social Worker Examiners, 1100 West 49th Street, Austin, Texas 78756-3183, telephone (800) 232-3162 or (512) 719-3521, (512) 834-6785 (fax). Comments will be accepted for 30 days following publication of this proposal in the *Texas Register*.

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §781.101, §781.102

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Social Worker Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The repeals affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.101. Purpose and Scope.

§781.102. Definitions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2005.

TRD-200501859

Deborah Hammond, LMSW-ACP

Chair

Texas State Board of Social Worker Examiners

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For further information, please call: (512) 458-7236

22 TAC §781.101, §781.102

The new rules are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The new rules affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.101. Purpose and Scope.

(a) The purpose of this chapter is to implement the provisions in the Social Work Practice Act (Act), Occupations Code Chapter 505, concerning the licensure and regulation of social workers.

(b) The Act restricts the use of the titles "social worker," "licensed master social worker," "licensed social worker," "licensed baccalaureate social worker," "licensed clinical social worker" or "social work associate" or any other title that implies licensure or certification in professional social work services.

(c) A person not represented to the public, directly or indirectly, as a social worker is exempt from this chapter.

(d) This chapter covers the organization, administration, and general procedures and policies of the Texas State Board of Social Worker Examiners.

(e) The Act and this chapter apply to every licensee even if the licensee is involved in activities or services exempt under the Act, §505.003.

§781.102. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accredited colleges or universities--An educational institution that is accredited by an agency recognized by the Texas Higher Education Coordinating Board.

(2) Act--The Social Work Practice Act, Occupations Code, Chapter 505.

(3) ALJ--A person within the State Office of Administrative Hearings who conducts hearings under this chapter on behalf of the board.

(4) Agency--A public or private employer, contractor or business entity providing social work services.

(5) APA--The Administrative Procedure Act, Government Code, Chapter 2001.

(6) Association of Social Work Boards (ASWB)--National organization representing regulatory boards of social work. Administers the national examinations utilized in the assessment for licensure.

(7) Board--Texas State Board of Social Worker Examiners.

(8) Case record--Any information related to a client and the services provided to that client, however recorded and stored.

(9) Client--An individual, family, couple, group or organization that seeks or receives social work services from a person identified as a social worker who is either licensed or unlicensed by the board. An individual, family, couple, group or organization remains a client until the formal termination of services.

(10) Clinical social work--A specialty within the practice of social work that requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore

or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of Clinical Social Work requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness in adults and serious emotional disturbances in children. Treatment methods include the provision of individual, marital, couple, family, and group therapy and psychotherapy. Clinical social workers are qualified to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), and other diagnostic classification systems in assessment, diagnosis, and other activities.

(11) Clinical supervision--An interactional professional relationship between a supervisor and a social worker that provides evaluation and direction over the supervisee's practice of clinical social work and promotes continued development of the social worker's knowledge, skills, and abilities to engage in the practice of clinical social work in an ethical and competent manner.

(12) Confidential information--Individually identifiable information obtained from a client or records relating to a client, including the client's identity, demographic information collected from an individual, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of social work services to an individual; the past, present, or future payment for the provision of social work services to an individual; and identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual which is not disclosable under applicable law or court rules of evidence. Client information is "confidential" if it is intended to be disclosed to third persons to further the interest of the client in the diagnosis, examination, evaluation, or treatment, or those reasonably necessary for the transmission of the communication, or those who are participating in the diagnosis, examination, evaluation, or treatment under the direction of the professional, including members of the patient's family.

(13) Completed application--The official social work application form, fees and all supporting documentation which meets the criteria set out in this title (relating to Required Application Materials).

(14) Contested case--A proceeding in accordance with the APA and this chapter, including, but not limited to, rule enforcement and licensing, in which the legal rights, duties, or privileges of a party are to be determined by the board after an opportunity for an adjudicative hearing.

(15) Counseling--A method used by social workers to assist individuals, couples, families or groups in learning how to solve problems and make decisions about personal, health, social, educational, vocational, financial, and other interpersonal concerns.

(16) Consultation--To provide advice, opinions and to confer with other professionals regarding social work practice.

(17) Continuing education--Formal or informal education or trainings, which are oriented to maintain, improve or enhance social work practice.

(18) Council on Social Work Education (CSWE)--The national organization that accredits social work education schools and programs.

(19) Department--Department of State Health Services.

(20) Detrimental to the client--An act or omission of a professional responsibility that is damaging to the physical, mental, or financial status of the client.

(21) Direct practice--The provision of services, research, system linkage, system development, maintenance and enhancement of social and psychosocial functioning of clients.

(22) Dual relationship--Dual or multiple relationships occur when social workers relate to clients in more than one capacity, whether it be before, during or after the professional, social, or business relationship. Dual or multiple relationships can occur simultaneously or consecutively.

(23) Endorsement--The process whereby the board reviews requirements for licensure completed while under the jurisdiction of a different regulatory board from another state. The board may accept, deny or grant partial credit for requirements completed in a different jurisdiction.

(24) Examination--A standardized test or examination of social work knowledge, skills and abilities, which has been approved by the board.

(25) Exploitation--An unequal balance is inherent in the client/professional relationship and may be present in the professional/professional relationship. To use this power imbalance for the personal benefit of the professional at the expense of the client or another professional is exploitation. Exploitation may take financial, business, emotional, sexual, verbal, religious and/or relational forms.

(26) Exploitive behavior--A pattern, practice or scheme of conduct that can reasonably be construed as being primarily for the purposes of meeting the needs or being to the benefit of the social worker rather than in the best interest of the client or at the expense of another professional. Exploitation may take financial, business, emotional, sexual, verbal, religious and/or relational forms.

(27) Family systems--An open, on-going, goal-seeking, self-regulating, social system. Certain features such as its unique structuring of gender, race, nationality and generation set it apart from other social systems. Each individual family system is shaped by its own particular structural features (size, complexity, composition, life stage), the psychobiological characteristics of its individual members (age, race, nationality, gender, fertility, sexual orientation, health and temperament) and its socio-cultural and historic position in its larger environment.

(28) Formal hearing--A hearing or proceeding in accordance with this chapter, including a contested case as defined in this section to address the issues of a contested case.

(29) Flagrant--Obviously inconsistent with what is right or proper as to appear to be a flouting of law or morality.

(30) Fraud--Any misrepresentation or omission by a social worker related to professional qualifications, services, or related activities or information that benefits the social worker.

(31) Full-time experience--Social work services totaling 30 or more hours per week.

(32) Group supervision--Supervision that involves a minimum of two and no more than six supervisees in a supervision hour.

(33) Health care professional--A licensee or any other person licensed, certified, or registered by the State of Texas in a health related profession.

(34) Home study--A formal written evaluation or social study to determine what is the best interest of a minor child or other dependent person.

(35) Independent practice--The practice of social work services outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients in exchange for direct payment or third party reimbursement.

(36) Indirect practice--Work on behalf of the client utilizing negotiation, education, advocacy, administration, research, policy development and resource location that does not involve immediate or personal contact with the clients being served.

(37) Individual supervision--Supervision of one supervisee during the supervision session.

(38) Investigator--A professional utilized by the board in the investigation of allegations of professional misconduct.

(39) LBSW--Licensed Baccalaureate Social Worker.

(40) LCSW--Licensed Clinical Social Worker.

(41) License--A regular, provisional, or temporary license or recognition issued by the board unless the content of the rule indicates otherwise.

(42) Licensee--A person licensed or recognized by the board to perform professional social work practice.

(43) LMSW--Licensed Master Social Worker.

(44) LMSW-ACP--Licensed master social worker-advanced clinical practitioner.

(45) LMSW-AP--Licensed master social worker-advanced practitioner.

(46) LSW--Licensed social worker.

(47) Non-clinical social work--The areas of social work practice that include community organization, planning, administration, teaching, research, administrative supervision, non-clinical consultation and other related social work activities.

(48) Part-time--Social work services totaling less than 30 hours per week.

(49) Party--Each person, governmental agency, or officer or employee of a governmental agency named by the ALJ as having a justiciable interest in the matter being considered, or any person, governmental agency, or officer or employee of a governmental agency meeting the requirements of a party as prescribed by applicable law.

(50) Persistently--Existing for a long or longer than usual time or continuously.

(51) Person--An individual, corporation, partnership, or other legal entity.

(52) Pleading--Any written allegation filed by a party concerning its claim or position.

(53) Psychotherapy--The use of treatment methods utilizing a specialized, formal interaction between a clinical social worker and an individual, couple, family, or group in which a therapeutic relationship is established, maintained and sustained to understand intrapersonal, interpersonal and psychosocial dynamics, and the diagnosis and treatment of mental, emotional, and behavioral disorders, conditions and addictions.

(54) Reciprocity--The granting of an official license based on the current status of licensure in a different jurisdiction. Reciprocity is granted based on the formal written agreement between the board and regulatory body in the other jurisdiction.

(55) Recognition--Authorization from the board to engage in the independent or specialty practice of social work services.

(56) Rules--Provisions in this chapter specifying the implementation of statute and operations of the board and individuals affected by the Act.

(57) Sexual contact--Any touching or behavior that can be construed as sexual in nature.

(58) Sexual exploitation--A pattern, practice or scheme of exploitative behavior, which may include sexual contact.

(59) Social Work Case Management--The use of a biopsychosocial perspective to assess, evaluate, implement, monitor and advocate for services on behalf of and in collaboration with the identified client.

(60) Social worker--A person licensed under the Act.

(61) Social work practice--Services and actions performed as an employee, independent practitioner, consultant, or volunteer for compensation or pro bono to effect changes in human behavior, a person's emotional responses, interpersonal relationships, and the social conditions of individuals, families, groups, organizations, and communities. For the purpose of this definition, the practice of social work is guided by special knowledge, acquired through formal social work education development and behavior within the context of the social environment, and methods to enhance the functioning of individuals, families, groups, communities, and social welfare organizations. Social work practice involves the disciplined application of social work values, principles, and methods, including psychotherapy, marriage and family therapy, couples therapy, group therapy, case management, supervision of social work services, counseling, assessment, and evaluation. Social work practice may also be referred to as social work services, of social welfare policies and services, social welfare systems and resources, human services.

(62) Supportive counseling--The methods used by social worker to help individuals create and maintain adaptive patterns. Such methods may include building community resources and networks, linking clients with services and resources, educating clients and informing the public, helping clients identify and build strengths, leading community groups, and providing reassurance and support. This type of social work is not considered clinical social work.

(63) SWA--A person licensed as a social worker associate.

(64) Supervisor--A person meeting the requirements set out in §781.302 of this title (relating to Supervisor Requirements), to supervise a licensee towards the LCSW, LMSW-AP or Independent Practice recognition.

(65) Supervision--The professional interaction between a supervisor and a social worker in which the supervisor evaluates and directs the services provided by the social worker and promotes continued development of the social worker's knowledge, skills and abilities to provide social work services in an ethical and competent manner.

(66) Supervision hour--A supervision hour is a minimum of 60 minutes in length.

(67) Telepractice--Interactive service delivery where the client resides in one location and the professional in another.

(68) Termination--The end of professional services, meetings, and billing for services.

(69) Texas Open Meetings Act--Government Code, Chapter 551.

(70) Texas Public Information Act--Government Code, Chapter 552.

(71) Waiver--The suspension of educational, professional, and/or examination requirements for applicants who meet the criteria for licensure under special conditions based on appeal to the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Deborah Hammond, LMSW-ACP

Chair

Texas State Board of Social Worker Examiners

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For further information, please call: (512) 458-7236



SUBCHAPTER B. THE BOARD

22 TAC §§781.201 - 781.217

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Social Worker Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The repeals affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.201. *Board Rules.*

§781.202. *Board Meetings.*

§781.203. *Board Training.*

§781.204. *Transaction of Official Board Business.*

§781.205. *Board Agendas.*

§781.206. *Board Minutes.*

§781.207. *Elections.*

§781.208. *Officers of the Board.*

§781.209. *Committees of the Board.*

§781.210. *Executive Director.*

§781.211. *Reimbursement for Expenses.*

§781.212. *Official Records of the Board.*

§781.213. *Impartiality and Non-discrimination.*

§781.214. *Applicants with Disabilities.*

§781.215. *The License.*

§781.216. *Roster of Licensees.*

§781.217. *Fees.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Deborah Hammond, LMSW-ACP

Chair

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22 TAC §§781.201 - 781.217

The new rules are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The new rules affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.201. Board Rules.

(a) The purpose of this section is to delineate the board's procedures for the submission, consideration, and disposition of a petition to the board to adopt a rule.

(b) Submission of the petition.

(1) Any person may petition the board to adopt a rule.

(2) The petition shall be in writing; shall state the petitioner's name, address, and phone number; and shall contain the following:

(A) a brief explanation of a justification for the proposed rule;

(B) the text of the proposed rule prepared in a manner to indicate the words to be added or deleted from the current text, if any;

(C) a statement of the statutory or other authority under which the rule is to be promulgated; and

(D) the public benefit anticipated as a result of adopting the rule or the anticipated injury or inequity which could result from the failure to adopt the proposed rule.

(3) The petition shall be filed with the board office.

(4) The board office may determine the petition does not contain the information described in paragraph (2) of this subsection and shall return the petition to the petitioner.

(c) Consideration and disposition of the petition.

(1) Except as otherwise provided in subsection (d) of this section, the executive director shall submit a completed petition to the board for consideration.

(2) Within 60 days after receipt of the petition, the board shall deny the petition or institute rulemaking procedures in accordance with the APA, the Government Code, Chapter 2001. The board may deny parts of the petition or institute rulemaking procedures on parts of the petition.

(3) If the board denies the petition, the board shall give the petitioner written notice of the board's denial, including the board's reasons for the denial.

(4) If the board initiates rule-making procedures, the version of the rule that the board proposes may differ from the version proposed by the petitioner.

(d) Subsequent petitions to adopt the same or similar rules. All initial petitions for the adoption of a rule shall be presented to and decided by the board in accordance with the provisions of subsections (b)

and (c) of this section. The board may refuse to consider a subsequent petition for the adoption of the same or similar rules submitted within six months after the date of an initial position.

§781.202. Board Meetings.

(a) The board shall hold at least one meeting each year and additional meetings as necessary.

(b) The chairperson may call a meeting after consultation with board members or by a majority of members so voting at a meeting.

(c) Meetings shall be announced and conducted under the provisions of the Texas Open Meetings Act.

(d) The chairperson may invite comments or statements from non-board members on all agenda items, but may limit the time allotted to each individual. The board may not act on comments or statements related to issues not on the agenda.

(e) Interpreters and other reasonable accommodations necessary to facilitate public participation will be made available as requested. The executive director must receive notice that reasonable accommodations will be needed at least 10 days in advance of the board or committee meeting.

§781.203. Board Training.

The board adopts the Health Professions Council's approved board member training as the official training required of all new board members.

§781.204. Transaction of Official Board Business.

(a) The board may transact official business only when in a legally constituted meeting with a quorum present. A quorum of the board necessary to conduct official business is five members.

(b) The board shall not be bound in any way by any statement or action on the part of any board or staff member except when a statement or action is pursuant to specific instructions of the board.

(c) Robert's Rules of Order Revised shall be the basis of parliamentary decisions except as otherwise provided in this chapter.

§781.205. Board Agendas.

(a) The executive director shall be responsible for preparing and submitting an agenda to each member of the board prior to each meeting which includes items requested by members, items required by law, and other matters of board business which have been approved for discussion by the chairperson.

(b) Requests for items to be placed on the agenda must be submitted to the executive director at least 30 days in advance of the scheduled meeting.

(c) The official agenda of a meeting shall be filed with the Texas Secretary of State as required by law.

§781.206. Board Minutes.

(a) The minutes of a board meeting are official only when affixed with the original signature of the chairperson.

(b) Drafts of the minutes of each meeting shall be forwarded to each member of the board for review and comments or corrections prior to approval by the board.

(c) The official minutes of the board meetings shall be kept in the office of the executive director and shall be available to any person desiring to examine them.

§781.207. Elections.

(a) At the first meeting following the last day of January of each year, the board shall elect a vice-chair.

(b) A vacancy, which occurs in the office of vice-chair, may be filled at any meeting.

§781.208. Officers of the Board.

(a) Chair.

(1) The chair shall preside at all meetings of the full board at which he or she is in attendance and perform all duties prescribed by law or this chapter.

(2) The chair is authorized by the board to make day-to-day decisions regarding board activities in order to facilitate the responsiveness and effectiveness of the board.

(b) Vice-chair.

(1) The vice-chair shall perform the duties of the chair in case of the absence or disability of the chair.

(2) In case the office of the chair becomes vacant, the vice-chair shall serve until a successor is appointed.

§781.209. Committees of the Board.

(a) The board or the chair may establish committees deemed necessary to carry out board responsibilities.

(b) The chair shall appoint members of the board to serve on committees and shall appoint the committee chairs.

(c) The chair may appoint non board members to serve as committee members on a consultant or voluntary basis subject to board approval.

(d) Committee chairs shall make regular reports to the board in interim written reports or at regular meetings.

(e) Committees may direct all reports or other materials to the executive director for distribution.

(f) Committees shall meet when called by the committee chair or when so directed by the board or the board chair.

(g) Each committee shall consist of least one public member and one professional member, unless the board authorizes otherwise.

§781.210. Executive Director.

(a) The executive director of the board shall be an employee of the department appointed by the Commissioner of Health, as the administrator of board activities.

(b) The executive director serves at the will of the board.

(c) The executive director shall keep the minutes of the meetings and proceedings of the board and shall be the custodian of the files and records of the board unless the board designates another custodian.

(d) The executive director shall exercise general supervision over persons employed in the administration of the Act. The executive director may delegate responsibilities to other staff members when appropriate.

(e) The executive director shall be responsible for the investigation and presentation of complaints.

(f) The executive director shall be responsible for all correspondence for the board and obtain, assemble, or prepare reports and information that the board may direct, or as authorized or required by the department or other agency with appropriate statutory authority.

(g) The executive director shall have the responsibility of assembling and evaluating materials submitted by applicants for licensure

and renewal. Determinations made by the executive director that propose denial of licensure are subject to the approval of the appropriate committee of the board or the board which shall make the final decision on the eligibility of the applicants.

§781.211. Reimbursement for Expenses.

(a) A board member is entitled to per diem in the same amount set for state employees by the General Appropriations Act and travel expenses to and from meetings.

(b) Payment to members of per diem and transportation expenses shall be on official department vouchers.

§781.212. Official Records of the Board.

(a) Records that are public may be reviewed by inspection or duplication, or both in accordance with the Texas Public Information Act. Confidential records will not be made available.

(b) When any person's request would be unreasonably disruptive to the ongoing business of the office or when the safety of any record is at issue, physical access by inspection may be denied and the requester will be provided the option of receiving copies at the requester's cost.

(c) Applicable costs of duplication shall be paid by the requester at the time of or before the duplicated records are sent or given to the requester. The charge for copies shall be the same as set by the department for copies.

(d) The rules of procedure for inspection and duplication of public records contained in the Texas Public Information Act shall apply to requests received by the board.

§781.213. Impartiality and Non-discrimination.

(a) The board shall make all decisions in the discharge of its statutory authority without regard to any person's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation.

(b) Any board member who is unable to be impartial in the determination of an applicant's eligibility for licensure or in a disciplinary action against a licensee shall so declare this to the board and shall not participate in any board proceedings involving that applicant or licensee.

§781.214. Applicants with Disabilities.

(a) The board shall comply with applicable provisions of the Americans with Disabilities Act.

(b) Applicants with disabilities shall inform the board in advance of any reasonable accommodations needed.

§781.215. The License.

(a) The board shall prepare and provide to each licensee a license, which contains the licensee's name and license number.

(b) Regular licenses shall be signed by the board chairperson and executive director and be affixed with the seal of the board.

(c) Temporary and provisional licenses shall be printed on board letterhead and signed by the executive director.

(d) All licenses issued by the board remain the property of the board and must be surrendered to the board on demand. The board maintains jurisdiction over a licensee until the license is returned to the board.

§781.216. Roster of Licensees.

(a) The board shall publish a roster of licensees at its discretion.

(b) The roster of licensees shall include, but not be limited to, the name and address of current licensees.

(c) The board shall mail a copy of the roster to each licensee, and upon request, copies to other state agencies and the general public.

§781.217. Fees.

(a) The following are the board's fees:

(1) application fee for all licenses or specialty recognition--\$20;

(2) license fee for LBSW, or LMSW--\$60 biennially;

(3) renewal fee for LBSW or LMSW--\$60 biennially;

(4) license fee for LCSW--\$80 biennially;

(5) renewal fee for LCSW--\$80 biennially;

(6) additional license fee for specialty recognition (AP or Independent Practice)--\$20 biennially;

(7) additional or replacement license fee--\$10;

(8) fee for late renewal:

(A) 1-90 days--renewal fee plus fee equal to one-half the current contracted examination fee rounded to the nearest dollar amount; or

(B) 91 days, but less than one year--renewal fee plus fee equal to the current contracted examination fee rounded to the nearest dollar amount.

(9) inactive status fee--\$30 biennially;

(10) returned check fee--\$25;

(11) written license verification fee--\$10 per verification copy;

(12) specialty license verification fee--\$10 per verification copy;

(13) student loan default reinstatement fee--\$35;

(14) continuing education sponsor application fee--\$50 annually;

(15) delinquent child support administrative fee--\$35;

(16) legislatively mandated fees per licensee for the operation of the Office of Patient Protection per application and renewal as legislatively established;

(17) legislatively mandated fees per licensee for the boards participation in the Texas On-line per application and renewal as legislatively established;

(18) approved supervisor fee--\$25 annually;

(19) AMEC participant administrative fee--Fee equal to the current contract examination fee;

(20) Petition for re-examination fee--\$20 per petition; and

(21) Temporary license fee--\$30.

(b) Fees paid to the board by applicants are not refundable except in accordance with §781.303 of this title (relating to Independent Practice Recognition).

(c) Remittances submitted to the board in payment of fees may be in the form of a personal check, cashier's check, or money order; however, repayment of funds after a returned check, including the returned check fee, must be in the form of a cashier's check or money order.

(d) A license which is issued by the board, but for which a check is returned (for example, insufficient funds, account closed, or payment stopped) is invalid. A license will be considered expired and the licensee in violation of board rules until the receipt and processing of the renewal fee and returned check fee by the board.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2005.

TRD-200501862

Deborah Hammond, LMSW-ACP

Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: June 19, 2005

For further information, please call: (512) 458-7236



SUBCHAPTER C. LICENSES AND LICENSING PROCESS

22 TAC §§781.301 - 781.315

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Social Worker Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The repeals affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.301. *Qualifications for Licensure.*

§781.302. *Supervision for Specialty Recognition.*

§781.303. *Application.*

§781.304. *Required Documentation of Qualifications for Licensure.*

§781.305. *Fitness of Applicants for Licensure.*

§781.306. *Materials Considered in Determination of Fitness of Applicants.*

§781.307. *Finding of Non-fitness.*

§781.308. *Provisional Licenses.*

§781.309. *Temporary License.*

§781.310. *Examination Requirement.*

§781.311. *Alternate Method of Examining Competency.*

§781.312. *Issuance of Licenses.*

§781.313. *Application Denial.*

§781.314. *Required Reports to the Board.*

§781.315. *Surrender of License.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2005.

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Deborah Hammond, LMSW-ACP

Chair

Texas State Board of Social Worker Examiners

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For further information, please call: (512) 458-7236



22 TAC §§781.301 - 781.317

The new rules are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The new rules affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.301. Qualifications for Licensure.

(a) The following education and experience is required for the specified licenses and specialty recognitions:

(1) Licensed Clinical Social Worker (LCSW).

(A) Must be licensed as an LMSW.

(B) Obtain 3000 hours of Board approved supervised professional full-time clinical employment experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state.

(C) Complete a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board-approved supervisor. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(D) Passing score on the clinical exam administered nationally by ASWB.

(2) Licensed Master Social Worker (LMSW).

(A) A doctoral or master's degree in social work from a CSWE accredited social work program.

(B) Passing score on the intermediate or master's exam administered nationally by ASWB.

(3) Licensed Master Social Worker-Advanced Practitioner (LMSW-AP).

(A) Must be licensed as an LMSW.

(B) Obtain 3000 hours of Board approved supervised professional full-time non-clinical employment experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state.

(C) Complete a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board-approved supervisor. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(D) Passing score on the advanced or advanced generalist examination administered nationally by ASWB.

(4) Licensed Baccalaureate Social Worker (LBSW).

(A) A baccalaureate degree in social work from a CSWE accredited social work program.

(B) Passing score on the basic exam administered nationally by ASWB.

(b) Only a person who is licensed and has been recognized by the board for independent practice is qualified for the independent practice of social work.

(1) A LCSW may provide any clinical or non-clinical social work services in either an employment or independent practice setting.

(2) An LMSW-AP, LBSW or LMSW recognized for independent practice must restrict his or her independent practice to the provision of non-clinical social work services.

(3) A licensee must not engage in any independent practice that falls within the definition of social work practice (relating to definitions) without being licensed and recognized by the board unless the person is licensed in another profession and acting solely within the scope of that license. The person may not use the titles "licensed clinical social worker," "licensed master social worker," "licensed social worker," "licensed baccalaureate social worker," or "social work associate" or any other title or initials that states or implies licensure or certification in social work unless one holds the appropriate license or recognition.

(4) A licensee who is not recognized for independent practice may not provide direct social work services to clients from a location that she or he owns or leases and that is not owned or leased by an employer or other legal entity with responsibility for the client. This does not preclude in home services such as in home health care or the use of telephones or other electronic media to provide services in an emergency.

§781.302. Supervision for LCSW or LMSW-AP.

A LMSW who plans to apply for the LCSW or LMSW-AP must:

(1) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director within 30 days of initiating supervision. If the LMSW fails to submit a supervisory plan, then the LMSW will need to submit documentation regarding dates, times and summary of all supervisory sessions at the time the LMSW makes application for the LCSW or LMSW-AP;

(2) submit a current job description from the agency in which the social worker is employed with a verification of authenticity from the agency director or their designee on agency letterhead;

(3) submit a supervision verification form to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for recognition as an AP or LCSW, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee; and

(4) submit a new supervisory plan within 30 days of changing supervisors.

(5) A person who has obtained only the temporary license may not begin the supervision process until the issuance of the regular license.

§781.303. Independent Practice Recognition.

A LBSW or LMSW who seeks to obtain board approval for the recognition of independent practice shall meet requirements and parameters set by the board.

(1) To qualify for the recognition of independent practice, as a LBSW, an individual, after licensure, shall obtain 3000 hours of Board approved supervised full-time experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state. Supervised experience

must have occurred within the five previous calendar years occurring from the date of application.

(2) To qualify for the recognition of independent practice, as a LMSW, an individual, after licensure, shall obtain 3000 hours of Board approved supervised full-time experience over a minimum two-year period, but within a maximum four-year period or its equivalent if the experience was completed in another state. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(3) To qualify for independent practice the licensee must complete a minimum of 100 hours of face-to-face supervision, over the course of the 3000 hours of full-time experience, with a board approved supervisor. A licensee who plans to apply for independent practice recognition shall:

(A) submit a supervisory plan to the board for approval by the appropriate committee of the board or executive director within 30 days of initiating supervision. If the licensee fails to submit a supervisory plan, then the licensee will need to submit documentation regarding dates, times and summary of all supervisory sessions at the time the licensee makes application for the upgrade.

(B) submit a current job description from the agency the social worker is employed in with a verification of authenticity from the agency director or their designee on agency letterhead.

(C) submit a supervision verification form to the board within 30 days of the end of each supervisory plan with each supervisor. If the supervisor does not recommend the supervisee for recognition as an independent practice, the supervisor must provide specific reasons for not recommending the supervisee. The board may consider the supervisor's reservations in its evaluation of qualifications of the supervisee.

(D) submit a new supervisory plan within 30 days of changing supervisors.

(E) An individual providing supervision to a LBSW shall be a LBSW, LMSW, LMSW-AP or LCSW. An individual providing supervision to a LMSW shall be a LMSW, LMSW-AP or LCSW. In addition to the required licensure, the supervisor shall be board-approved and have attained the recognition of independent practice.

(4) A person who has obtained only the temporary license may not begin the supervision process until the issuance of the regular license.

(5) The board may use the twenty common law factors developed by the Internal Revenue Service (IRS) as part of their determination process regarding whether a worker is an independent contractor or an employee.

(A) No instructions to accomplish a job.

(B) No training by the hiring company.

(C) Others can be hired by the independent contractor (sub-contracting).

(D) Independent contractor's work is not essential to the company's success or continuation.

(E) No time clock.

(F) No permanent relationship between the contractor and company.

(G) Independent contractors control their own workers.

(H) Independent contractor should have enough time available to pursue other jobs.

(I) Independent contractor determines location of work.

(J) Independent contractor determines order of work.

(K) No interim reports.

(L) No hourly pay.

(M) Independent contractor often works for multiple firms.

(N) Independent contractor is often responsible for own business expenses.

(O) Own tools.

(P) Significant investment.

(Q) Services available to the public by having an office and assistants; having business signs; having a business license; listing their services in a business directory; or advertising their services.

(R) Profit or loss possibilities.

(S) Can't be fired.

(T) No compensation if the job isn't done.

§781.304. Recognition as an Approved Supervisor and Supervision Process.

A person who wishes to be an approved supervisor must file a request with the board.

(1) A supervisor must:

(A) be a LBSW, LMSW, LCSW or LMSW-AP in good standing or hold the equivalent social work license or certification in another state;

(B) take professional responsibility for the social work services provided within the supervisory plan;

(C) have completed a supervisor's training program acceptable to the board;

(D) currently be engaged in the practice of social work and self-identified as a social worker;

(E) submit the required documentation and fee to the board for approval; and

(F) pay the annual Approved Supervisor fee as listed in §781.217 of this title (relating to Fees).

(2) On receipt of the request and verification of qualifications, the board will issue a letter of approval to a qualified supervisor.

(3) A supervisor must maintain the qualifications described in subsection (a) of this section while he or she is providing supervision.

(4) Supervisory sessions may be in one-on-one sessions or in a combination of individual and group sessions.

(A) There can be no more than six individuals in a supervision group.

(B) Supervision shall be spread out over the experience of the supervisee.

(C) Supervision shall be accomplished in one or two hour blocks not exceeding 10 hours per month.

(D) Supervision must be face-to-face meetings between the supervisor and supervisee unless the executive director of the board

or a committee of the board has granted an exception allowing an alternate form of supervision due to geographical difficulties or physical disabilities. If an alternate form of supervision is approved, limits may be set on the amount of alternate supervision to assure sufficient interaction between the supervisor and supervisee.

(5) Supervision must extend over a full 3000 hours. Supervision must average one hour per 30-40 hours of social work services over the full period. Individuals who work less than 30 hours per week will be credited for experience and supervision in proportion to the average hours worked per week.

(6) A social worker may contract for supervision with written approval of the employing agency. A copy of the approval must accompany the supervisory plan submitted to the board.

(7) A board-approved supervisor may not charge or collect a fee or anything of value from his or her employee or contract employee for the supervision services provided to the employee or contract employee.

(8) The supervisor must be responsible for establishing all conditions of exchange with the clients served by her or his supervisee.

(9) Supervision completed before the effective date of this chapter will be evaluated on the basis of the rules in effect at the time the supervision plan or verification is submitted to the board.

(10) A supervisor may not be "employed by" or "under the employment supervision of" the person whom he or she is supervising.

(11) A supervisor may not be related within the second degree by affinity (marriage) or within the third degree by consanguinity (blood or adoption) to the person whom he or she is supervising.

(12) During the period of supervised experience, a supervisee may be employed on a salary basis or volunteer within an established supervisory setting. The established settings must be structured with clearly defined job descriptions and areas of responsibility. The board may require that the applicant provide documentation of all work experience.

(13) All supervision submitted in fulfillment of the board's requirements must have been on a formal basis arranged prior to the period of supervision. Supervisory arrangements must include all specific conditions agreed to by the supervisor and supervisee.

(14) No payment for services will be made directly by a client to the supervisee.

(15) Client records are the responsibility of the agency and shall remain the property of the agency and not the property of the supervisee.

(16) A supervisor shall submit billing reflective of the services provided and the provider of that service. All billing documents for services provided by the supervisee shall reflect the license held by the supervisee and that the licensee is under supervision.

§781.305. Application for Licensure.

(a) An application for licensure must be on the official form designated by the board. Application packets, which include the application form, are available on request.

(b) The application process begins when the completed application form and fee are received in the board office.

(c) Receipt of an application form will be acknowledged by a letter from the executive director within 15 working days of receipt. The letter will include:

(1) the licensing or recognition category requested;

(2) deficiencies in documented qualifications, if any; and

(3) additional documentation necessary for examination approval. This could include transcripts, supervisory references and other documents, which verify qualifications.

(d) A letter approving the applicant to sit for the examination will be mailed within 15 working days of the receipt of all required documentation.

(e) If an applicant fails to fully document his or her qualifications and/or fails to pass the examination within 12 months of filing the application, his or her application will be voided and reapplication may be required. If the applicant fails the examination, reexamination will be required prior to the expiration of the application.

(f) If the applicant passes the examination, the executive director shall mail a notice of approval stating the fee for initial licensure.

(g) When the applicant has met all other qualifications for licensure and on receipt of the license fee in the board office, licensure for the LCSW, LMSW, LBSW, SWA or specialty recognition will be immediately granted and the license will be mailed to the licensee within 10 working days.

(h) In the event an application is not processed in the time periods stated in this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement shall be made, in writing, to the executive director. If the executive director does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied. The executive director will respond to the request for refund within 30 days from the date it is received. Good cause for exceeding the time period is considered to exist if the number of applications for license or license renewal exceeds by 15% or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by the board in the application process caused the delay; or any other condition exists giving the board good cause for exceeding the time period.

(i) If a request for reimbursement under this section is denied by the executive director, the applicant may appeal to the chairperson of the board for a timely resolution of any dispute arising from a violation of the time periods. The applicant shall give written notice to the chairperson at the address of the board that he or she requests full reimbursement of all fees paid because his or her application was not processed within the applicable time period. The executive director shall submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period. The chairperson shall provide written notice of the chairperson's decision to the applicant and the executive director. An appeal shall be decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, full reimbursement of all fees paid in that particular application process shall be made.

§781.306. Required Documentation of Qualifications for Licensure.

(a) Application form. An applicant for licensure must submit a completed official application form made under oath with all requested information.

(b) Education verification.

(1) The applicant's education must be documented by official college transcripts. Educational requirements must be met by completion of educational programs at accredited colleges or universities.

(2) Degrees for licensure as a LSW or LMSW must be from programs accredited or in candidacy for accreditation by CSWE. (Current written verification of a program's CSWE candidacy status must be on file with the board.) College or university degrees from outside of the United States and its territories must be from programs judged by the CSWE to be equivalent to a CSWE accredited program in the United States.

(c) Experience verification.

(1) Experience required for licensure as a LCSW, SWA or for specialty recognition must meet the requirements of §781.301 of this title (relating to Qualifications for Licensure). Private, independent practice within the scope of the definition of professional social work practice will not be counted as experience in this subsection. Required written documentation includes:

(A) names and addresses of supervisors;

(B) beginning and ending dates of supervision;

(C) job description;

(D) average number of hours of social work activity per week; and

(E) evaluations from each supervisor.

(2) Written documentation of experience must include verification of the following:

(A) administrative authority over the applicant's provision of social work services;

(B) the applicant's compensation status for services; and

(C) the employment status as reflected in all advertising, informational material, and written policy.

(3) The board shall credit part-time experience on a prorated basis.

(4) Experience must have been in a position with primary responsibility for providing social work services, under the supervision of a qualified supervisor, and satisfactorily performed as indicated by written evaluations. Supervised experience must have occurred within the five previous calendar years occurring from the date of application.

(5) The applicant must maintain and upon request, provide to the board documentation of employment status, pay vouchers, or supervisory evaluations.

(d) References. An applicant must list on the official application the names and addresses of three individuals familiar with the applicant's professional qualifications. The board may contact the references for verification of the applicant's qualifications and fitness.

§781.307. Fitness of Applicants for Licensure.

(a) In determining the fitness of an applicant, the board shall consider all of the following:

(1) the skills and abilities of an applicant to provide adequate social work services to clients;

(2) the ethical behavior of an applicant in relationships with other professionals and clients; and

(3) the applicant's worthiness of public trust and confidence.

(b) The board may consider a person, who has committed any act that would have been a violation of the Act or this chapter had the

person been licensed at the time the act was committed, as unworthy of public trust and confidence.

(c) Surrender of a social work license within the previous five years while under investigation for professional misconduct shall be considered evidence that the person is unworthy of public trust and confidence.

(d) Revocation of a social work license within the previous five years for professional misconduct shall be considered evidence that the person is unworthy of public trust and confidence.

(e) A surrender or revocation, which occurred more than five years before application, may also be considered in determining fitness.
§781.308. Materials Considered in Determination of Fitness of Applicants.

In determining the fitness of applicants, the board shall consider the following:

- (1) evaluations of supervisors or instructors;
- (2) statements from persons submitting references for the applicant;
- (3) evaluations of employers and/or professional associations;
- (4) allegations of clients;
- (5) transcripts or findings from official court, hearing, or investigative proceedings; and
- (6) any other information which the board considers pertinent to determining the fitness of an applicant.

§781.309. Finding of Non-fitness.

(a) The substantiation of any of the following items related to an applicant may be, as the board determines, the basis for the denial of a license, license renewal or recognition:

- (1) lack of the necessary skills and abilities to provide adequate social work services;
- (2) any misrepresentation in the application for licensure or license renewal or any other materials submitted to the board;
- (3) the violation of any provision of the Act in effect at the time of application which is applicable to an unlicensed person; or
- (4) the violation of any provision of the code of ethics or standards of practice which would have applied if the applicant had been a licensee at the time of the violation.

(b) The board may require an applicant for licensure or license renewal to obtain a criminal background check from an agency designated by the board and provide the board an official copy of that report. The board may consider the information on the report in determining the applicant's eligibility for licensure or license renewal. Failure to obtain the background check within 30 days of the request from the board is grounds for the denial of the application for licensure or license renewal.

§781.310. Provisional Licenses.

(a) The board may grant a provisional license as a LMSW, LSW, or SWA to a person who holds, at the time of application, a license or certificate as a social worker or social work associate issued by another state, the District of Columbia, or a territory of the United States that is acceptable to the board. An applicant for a provisional license must:

- (1) submit a written request for a provisional license along with a completed application;

(2) be licensed in good standing as a social worker or social work associate in another state, the District of Columbia, or territory of the United States that has licensing requirements that are substantially equivalent to the regular licensing requirements of the Act;

(3) have passed an equivalent examination accepted by another state, District of Columbia, or territory for licensure or certification as a social worker; and

(4) be sponsored by a person who holds a license issued by the board with whom the provisional licensee may practice.

(b) An applicant for a provisional license may be excused from the requirement of subsection (a)(4) of this section if the board determines that compliance with that subsection constitutes a hardship to the applicant.

(c) The provisional licensee shall use the appropriate licensing title or initials followed by the word "provisional".

(d) The provisional license shall be issued for the same category or level of license or certificate as the applicant held in the other state, District of Columbia, or territory of the United States.

(e) The board must complete the processing of a provisional licensee's application for a regular license not later than the 180th day after the date the provisional license is issued or at the time licenses are issued following the successful completion of the examination, whichever is later. The person holding a provisional license must file all evidence of his or her academic and experience requirements within this time period. The board office shall evaluate the information received and may issue a deficiency letter during this period. If the documentation received during this period does not show that the person meets the education and experience requirements set out in this chapter, the application shall be proposed for denial.

(f) A provisional license is valid until the date the board issues a license or denies the provisional licensee's application for a license.

(g) The board shall issue a regular license to the holder of a provisional license if:

- (1) the provisional licensee passes the examination required by §505.354 of the Act; and
- (2) the board verifies that the provisional licensee has the education and experience requirements for a regular license.

(h) The board shall consider only states, the District of Columbia, and territories of the United States as acceptable for the purposes of licensure by endorsement.

§781.311. Temporary License.

(a) Prior to examination, an applicant for licensure may obtain a temporary license as a LMSW, LSW, or SWA as long as the applicant meets all the requirements, with the exception of the examination, for the level of license sought.

(1) A person holding a temporary license must take the designated examination within six months of issuance of the temporary license.

(2) The temporary license is valid until the results of the first qualifying examination are made available (i.e., the first examination taken by the temporary licensee or the end of the six months from issuance of the license if the examination is not taken, whichever is earlier).

(3) A person holding a temporary license must display the license at the licensee's place of business and must use the appropriate licensed title or initials followed by the word "Temporary" in all professional use of the licensee's name.

(4) Should the applicant take and fail the exam, the temporary license is no longer valid. The applicant must cease and desist from the use of the temporary license and title immediately.

(5) Should the applicant pass the exam the board will issue the license or specialty recognition in accordance with §781.305(g) of this title (relating to Application for Licensure).

(b) A person who failed the examination and is without a valid temporary license may retake the examination under §781.312 of this title (relating to Examination Requirement).

(c) A temporary license will not be granted to an applicant who has held a temporary license for the same license category within the previous five years.

(d) An applicant for LCSW or specialty recognition is not eligible for a temporary or provisional license.

(e) Applicants requesting a temporary license must submit the application form and temporary fee required by the board.

§781.312. Examination Requirement.

(a) An applicant for licensure or recognition must pass an examination designated by the board.

(b) If an applicant fails the first examination, the individual may retake the examination no more than two additional times. An applicant who has failed the examination three times must request in writing to the board to retake the examination a fourth time. The board may order the applicant to complete one or more social work educational courses as a prerequisite to retaking the examination. The applicant must submit the form and pay the petition for re-examination fee required by the board prior to each additional exam administration.

(c) An applicant who fails the exam must wait the required timeframe between exam administrations. The board or executive director may waive the waiting period if petition in writing providing justification of the waiver in accordance with board policy.

(d) If an applicant fails the examination on the fourth attempt, the person's application will be voided and reapplication may be required. The applicant will not be permitted to reapply for licensure for a period of not less than one year.

(e) The board may waive the examination for an applicant with a valid certificate or license from another state if the certificate or license was issued before January 1, 1986, if petitioned in writing.

§781.313. Alternate Method of Examining Competency (AMEC) Program.

(a) An applicant who has taken an examination within the previous 12 months and who has failed the examination on two or more occasions by fewer than five points may submit a written petition to the board for a probated license as a LBSW, or LMSW. The last examination must be within the past 12 months. The applicant must complete the application for participation, pay the administrative fee and submit the memorandum of understanding and the findings of facts documentation to the board for consideration.

(b) The board will consider the interest of the public in its review of the petition and will issue its decision in writing within 90 days of receiving all required materials from the applicant.

(c) The written decision will include the following:

(1) a statement of the reason(s) the petition for a probated license is denied; or

(2) the terms of participation under which the license is granted.

(d) The participant must complete the professional portfolio, quarterly reports and other requirements within the required timeframe as mandated by the board.

(e) The AMEC program must be completed in no less than 12 consecutive calendar months and no more than 24 consecutive calendar months from the date of agreed order issued by the board unless prior approval is received from the board or its designee.

(f) An AMEC participant must remain under supervision until the board has reviewed the required documents submitted and issued a final order regarding the issuance of a regular license by the board. Continued reports from the supervisor may be required at the discretion of the board or its designee.

(g) The board may grant a regular license to an applicant who successfully completes the terms of participation to the satisfaction of the board.

§781.314. Issuance of Licenses.

(a) The board issues licenses indicating the professional social work title, whether LBSW, LMSW, LMSW-AP or LCSW, granted to applicants who have met all of the qualifications established by the board.

(b) The license title or its initials must be included in all professional uses of the licensee's name as required by the Act, §505.351.

(c) A licensee shall display the license issued by the board in a prominent place in all locations of practice.

(d) A copy of the Code of Conduct listed in §781.401 of this title (relating to Code of Conduct) is issued with the license. The copy of the Code of Conduct also includes information regarding the client complaint process. The copy of the Code of Conduct must be displayed in all locations of practice.

(e) The board will make available its client information brochure on the board's Internet website. The board may provide copies to each licensee approved for independent practice. The licensee shall make these brochures available to all clients.

(f) A licensee who offers social work services on the Internet must include a statement that the licensee is licensed by the State of Texas and provide a copy of the code of ethics with the information on how to contact this board by mail or telephone.

(g) Upon request of the client, a licensee shall provide information regarding their license category and how to contact the board.

§781.315. Application Denial.

(a) The board shall deny an application if all of the requirements for licensure or recognition are not met. An applicant shall be notified when the license or recognition is proposed for denial.

(b) A person whose application for licensure or recognition is denied is entitled to a formal hearing as set out in Subchapter G of this chapter (relating to Formal Hearings).

§781.316. Required Reports to the Board.

(a) A licensee shall make written reports to the board office within 30 days of the following:

(1) a change of mailing address, place of employment or business or home phone number;

(2) an arrest or conviction of the licensee;

(3) the filing of a criminal case against the licensee;

(4) a criminal conviction, other than a Class C misdemeanor traffic offense, of the licensee;

(5) the settlement of or judgment rendered in a civil lawsuit filed against the licensee and relating to the licensee's professional social work practice; or

(6) complaints against, investigations involving or actions against the licensee done by a licensing or certification body related to health or mental health services when known by the licensee.

(b) The information received under subsection (a) of this section may be used by the board to determine whether a licensee remains fit to hold a license.

(c) Failure to make a report as required by subsection (a) of this section is grounds for disciplinary action by the board.

§781.317. Surrender of License.

(a) Surrender by licensee.

(1) A licensee may at anytime voluntarily offer to surrender his or her license for any reason, without compulsion.

(2) The license may be delivered to the board office by hand or mail. The licensee must cease practice as a social worker pending action from the board on the surrender of the licensee's license.

(3) If there is no complaint pending, the board office may accept the surrender and void the license.

(b) Formal disciplinary action.

(1) When a licensee has offered the surrender of his or her license after a complaint has been filed, the board shall consider whether to accept the surrender of the license.

(2) When the board has accepted such a surrender, the surrender is deemed to be the result of a formal disciplinary action and a board order shall be prepared accepting the surrender.

(3) In order to accept a surrender, the board may require the licensee to agree to certain findings of fact and conclusions of law, including the making of an admission of a violation of the Act or this chapter.

(4) Surrender of a license without acceptance thereof by the board or a licensee's failure to renew the license shall not deprive the board of jurisdiction against the licensee under the Act or any other statute.

(c) Reinstatement. A license, which has been surrendered by the licensee and accepted by the board, may not be reinstated; however, a person may apply for a new license in accordance with the Act and this chapter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2005.

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Deborah Hammond, LMSW-ACP
Chair

Texas State Board of Social Worker Examiners
Earliest possible date of adoption: June 19, 2005
For further information, please call: (512) 458-7236



SUBCHAPTER D. CODE OF ETHICS AND PROFESSIONAL STANDARDS OF PRACTICE

22 TAC §781.401, §781.402

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Social Worker Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The repeals affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.401. Code of Ethics.

§781.402. Standards of Practice.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2005.

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Deborah Hammond, LMSW-ACP
Chair

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SUBCHAPTER D. CODE OF CONDUCT AND PROFESSIONAL STANDARDS OF PRACTICE

22 TAC §§781.401 - 781.418

The new rules are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The new rules affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.401. Code of Conduct.

(a) A social worker must observe and comply with the code of conduct and standards of practice set forth in this Subchapter. Any violation of the code of conduct or standards of practice will constitute unethical conduct or conduct that discredits or tends to discredit the profession of social work and is grounds for disciplinary action.

(1) A social worker shall not refuse to do or refuse to perform any act or service for which the person is licensed solely on the basis of a client's age, gender, race, color, religion, national origin, disability, sexual orientation, or political affiliation.

(2) A social worker shall truthfully report or present her or his services, professional credentials and qualifications to clients or potential clients.

(3) A social worker shall only offer those services that are within his or her professional competency, and the services provided shall be within accepted professional standards of practice and appropriate to the needs of the client.

(4) A social worker shall strive to maintain and improve her or his professional knowledge, skills and abilities.

(5) A social worker shall base all services on an assessment, evaluation or diagnosis of the client.

(6) A social worker shall provide the client with a clear description of services, schedules, fees and billing at the initiation of services.

(7) A social worker shall safeguard the client's rights to confidentiality within the limits of the law.

(8) A social worker shall be responsible for setting and maintaining professional boundaries.

(9) A social worker shall not have sexual contact with a client or a person who has been a client.

(10) A social worker shall refrain from providing service while impaired due to the social worker's physical or mental health or the use of medication, drugs or alcohol.

(11) A social worker shall not exploit his or her position of trust with a client or former client.

(12) A social worker shall evaluate a client's progress on a continuing basis to guide service delivery and will make use of supervision and consultation as indicated by the client's needs.

(13) A social worker shall refer a client for those services that the social worker is unable to meet and terminate service to a client when continued service is no longer in the client's best interest.

(b) The grounds for disciplinary action of a social worker shall be based on the code of conduct or standards of practice in effect at the time of the violation.

§781.402. Standards of Practice of Professional Social Work.

(a) Practice of Baccalaureate Social Work--The application of social work theory, knowledge, methods, ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations and communities. Baccalaureate Social Work is basic generalist practice that includes interviewing, assessment, planning, intervention, evaluation, case management, information and referral, problem solving, supervision, consultation, education, advocacy, community organization and the development, implementation, and administration of policies, programs and activities.

(b) Practice of Clinical Social Work--A specialty within the practice of social work that requires the application of social work theory, knowledge, methods, ethics, and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, and/or persons who are adversely affected by social or psychosocial stress or health impairment. The practice of Clinical Social Work requires the application of specialized clinical knowledge and advanced clinical skills in the areas of assessment, diagnosis, and treatment of mental, emotional, and behavioral disorders, conditions and addictions, including severe mental illness in adults and serious emotional disturbances in children. The practice of Clinical Social Work acknowledges the practitioners ability to engage in Baccalaureate Social Work practice and Master's Social Work Practice. Treatment methods include the provision of individual, marital, couple, family, and group therapy and psychotherapy. Clinical social workers are qualified to use the Diagnostic and Statistical Manual of Mental Disorders (DSM), the International Classification of Diseases (ICD), and other diagnostic classification systems in assessment, diagnosis, and other activities. The practice of Clinical Social Work may include independent clinical practice and the provision of clinical supervision.

(c) Practice of Master's Social Work--is the application of social work theory, knowledge, methods and ethics and the professional use of self to restore or enhance social, psychosocial, or biopsychosocial functioning of individuals, couples, families, groups, organizations

and communities. Master's Social Work practice requires the application of specialized knowledge and advanced practice skills in the areas of assessment, treatment planning, implementation and evaluation, case management, information and referral, supervision, consultation, education, research, advocacy, community organization and the development, implementation, and administration of policies, programs and activities. The Practice of Master's Social Work may include the Practice of Clinical Social Work under clinical supervision. The practice of Master's Social Work acknowledges the practitioners ability to engage in Baccalaureate Social Work practice.

(d) Independent Practice--The practice of social work outside the jurisdiction of an organizational setting, after completion of all applicable supervision requirements, in which the social worker assumes responsibility and accountability for the nature and quality of the services provided to clients.

(e) Private Practice--The provision of clinical social work in independent practice wherein the practitioner is solely responsible for the welfare of the client and the services rendered.

§781.403. General Standards of Practice.

The scope of this section establishes standards of professional conduct required of a social worker. The licensee, following applicable statutes.

(1) Shall not knowingly offer or provide professional services to an individual concurrently receiving professional services from another mental health services provider except with that provider's knowledge. If a licensee learns of such concurrent professional services, the licensee shall take immediate and reasonable action to inform the other mental health services provider.

(2) Shall terminate a professional relationship when it is reasonably clear that the client is not benefiting from the relationship. When professional services are still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral or source.

(3) Shall not evaluate any individual's mental, emotional, or behavioral condition unless the licensee has personally interviewed the individual or the licensee discloses with the evaluation that the licensee has not personally interviewed the individual.

(4) May not persistently or flagrantly over treat a client.

(5) Shall not aid and abet the unlicensed practice of social work by a person required to be licensed under the Act.

(6) Shall not participate in any way in the falsification of applications for licensure. Nor shall an applicant for licensure participate in any way in the falsification of applications for licensure.

(7) Shall ensure that the individual has been informed of the following before or at the time of the individual's initial appointment with the licensee:

(A) qualifications of the provider and any intent to delegate service provision;

(B) any restrictions placed on the license by the board;

(C) the limits on confidentiality and privacy; and

(D) fees and arrangements for payment.

(8) Shall ensure that the individual has been informed of any changes to the items in paragraph (7) of this subsection prior to initiating the change.

(9) If bartering for services, has the responsibility to assure that the market value of the barter does not exceed the customary charge for the service.

§781.404. Relationships with Clients.

(a) A social worker shall make known to a prospective client the important aspects of the professional relationship, which can include but is not limited to office procedures, after-hours coverage, fees and arrangements for payment that might affect the client's decision to enter into the relationship.

(b) No commission or rebate or any other form of remuneration shall be given or received by a social worker for the referral of clients for professional services.

(c) A social worker shall not use relationships with clients to promote, for personal gain or for the profit of an agency, commercial enterprises of any kind.

(d) A social worker shall not engage in activities that seek to primarily meet the social worker's personal needs or personal gain instead of the needs of the client.

(e) A social worker shall be responsible for setting and maintaining professional boundaries.

(f) A social worker shall keep accurate records of services to include, but not be limited to, dates of services, types of services, progress or case notes and billing information for a minimum of five years for an adult client and five years beyond the age of 18 years of age for a minor, or in compliance with applicable laws or professional standards.

(g) A social worker shall bill clients or third parties for only those services actually rendered or as agreed to by mutual written understanding.

(h) A social worker shall terminate services when in the licensee's professional opinion the client either has met the service goals or is not benefiting from those services. When services to the client are still indicated, the licensee shall take reasonable steps to facilitate the transfer to an appropriate referral or sources.

(i) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claim or statement about the licensee's services, including, but not limited to:

(1) the effectiveness of services;

(2) the licensee's qualifications, capabilities, background, training, experience, education, professional affiliations, fees, products, or publications; or

(3) the practice or field of social work.

(j) A licensee shall not make any false, misleading, deceptive, fraudulent or exaggerated claims or statement about the services of an organization or agency, including, but not limited to, the effectiveness of services, qualifications, or products.

(k) If the licensee learns that any false, misleading, deceptive, fraudulent or exaggerated claims or statement about the services, qualifications or products have been made, the licensee shall take all available steps to correct the inappropriate claims and to prevent their recurrence. As appropriate, the licensee may notify the board in writing about these claims.

(l) A licensee shall provide social work intervention only in the context of a professional relationship.

(m) Telepractice may be used as part of the social work process. Social workers engaging in Telepractice must adhere to each provision of this chapter as well as those in the jurisdictions where the services take place.

(n) The licensee shall not provide social work to previous or current:

(1) family members;

(2) personal friends;

(3) educational associates;

(4) business associates; or

(5) individuals whose welfare might be jeopardized by a dual relationship.

(o) The licensee shall follow agency policy related to accepting from or giving gifts to clients or relatives of clients. If no agency policy exists, no gift with a value in excess of \$25 may be accepted or given.

(p) The licensee may not borrow or lend money or items of value to clients or relatives of clients.

(q) The licensee shall take reasonable precautions to protect individuals from physical or emotional harm resulting from interaction within individual and group settings.

(r) A licensee shall not promote the licensee's personal or business activities that are unrelated to the current professional relationship.

(s) A licensee shall set and maintain professional boundaries. Dual relationships with clients should be avoided. It is the responsibility of the social worker to ensure the safety of the client if a dual relationship arises.

§781.405. Sexual Misconduct.

(a) For the purpose of this section, the following terms shall have the following meanings.

(1) Sexual contact--Any touching or behavior that can be construed as sexual in nature or as defined by the Texas Penal Code, §21.01.

(2) Therapeutic deception--A representation by a licensee that sexual contact with, or sexual exploitation or exploitative behavior by, the licensee is consistent with, or a part of, a client's or former client's social work services.

(b) A licensee shall not engage in sexual contact or sexual exploitation with a person who is:

(1) a client or former client;

(2) being supervised by the licensee; or

(3) a student at an educational institution at which the licensee provides professional or educational services.

(c) A licensee shall not practice therapeutic deception of a person who is a client or former client.

(d) It is not a defense to a disciplinary action under subsections (a) - (c) of this section if the person was no longer emotionally dependent on the licensee when the sexual exploitation began, the sexual contact occurred, or the therapeutic deception occurred. It is also not a defense that the licensee terminated services with the person before the date the sexual exploitation began, the sexual contact occurred or the therapeutic deception occurred.

(e) It is not a defense to a disciplinary action under subsections (a) - (c) of this section if the sexual contact, sexual exploitation, or therapeutic deception with the person occurred:

(1) with the consent of the client;

(2) outside the appointments with the client; or

(3) off the premises used by the licensee for the appointments with the client.

(f) Examples of sexual contact are those activities and behaviors described in the Texas Penal Code, §21.01.

(g) A licensee shall report sexual misconduct in accordance with Texas Civil Practice and Remedies Code, Chapter 81. If a licensee has reasonable cause to suspect that a client has been the victim of sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, or if a client alleges sexual exploitation, sexual contact, or therapeutic deception by another licensee or a mental health services provider, the licensee shall report the alleged conduct not later than the 30th day after the date the licensee became aware of the conduct or the allegations to:

(1) the prosecuting attorney in the county in which the alleged sexual exploitation, sexual contact or therapeutic deception occurred; and

(2) the board if the conduct involves a licensee and any other state licensing agency which licenses the mental health services provider.

(3) Before making a report under this subsection, the licensee shall inform the alleged victim of the licensee's duty to report and shall determine if the alleged victim wants to remain anonymous.

(4) A report under this subsection need contain only the information necessary to:

(A) identify the licensee;

(B) identify the alleged victim, unless the alleged victim has requested anonymity;

(C) express suspicion that sexual exploitation, sexual contact, or therapeutic deception occurred; and

(D) provide the name of the alleged perpetrator.

(h) The following may constitute sexual exploitation if done for the purpose of sexual arousal or gratification or sexual abuse of any person who is or has been a recipient of professional services from the licensee for the purpose of engaging in the practice of baccalaureate, clinical or master's social work services in an independent or private practice setting:

(1) sexual harassment, sexual solicitation, physical advances, verbal or nonverbal conduct that is sexual in nature, and:

(A) is not bound in the therapeutic modality for the purpose of the professional services rendered;

(B) is offensive or creates a hostile environment, and the licensee knows or is told this; or

(C) is sufficiently severe or intense to be abusive to a reasonable person in the context.

(2) any behavior, gestures, or expressions which may reasonably be interpreted as inappropriately seductive or sexual;

(3) inappropriate sexual comments about or to a person, including making sexual comments about a person's body;

(4) making sexually demeaning comments about an individual's sexual orientation;

(5) making comments about potential sexual performance except when the comment is pertinent to the issue of sexual function or dysfunction in counseling;

(6) requesting details of sexual history or sexual likes and dislikes when not necessary for counseling of the individual;

(7) initiating conversation regarding the sexual problems, preferences, or fantasies of the licensee;

(8) kissing or fondling;

(9) making a request to date;

(10) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies, but of a sexual nature;

(11) any bodily exposure of genitals, anus or breasts;

(12) encouraging another to masturbate in the presence of the licensee; or

(13) masturbation by the licensee when another is present.

§781.406. Professional Representation.

(a) A social worker shall not misrepresent any professional qualifications or associations.

(b) A social worker shall not misrepresent any agency or organization by presenting it as having attributes, which it does not possess.

(c) A social worker shall not make unreasonable, misleading, deceptive, fraudulent, exaggerated, or unsubstantiated claims about the efficacy of any services.

(d) A social worker shall not encourage, or within the social worker's power, allow a client to hold exaggerated ideas about the efficacy of services provided by the social worker.

§781.407. Testing.

(a) A social worker shall make known to clients the purposes and explicit use to be made of any testing done as part of a professional relationship.

(b) A social worker shall not appropriate, reproduce, or modify published tests or parts thereof without the acknowledgment and permission of the publisher.

(c) A social worker shall not administer any test without the appropriate training and experience to administer the test.

(d) A social worker must observe the necessary precautions to maintain the security of any test administered by the social worker or under the social worker's supervision.

§781.408. Drug and Alcohol Use.

A licensee shall not:

(1) use alcohol or drugs in a manner which adversely affects the licensee's ability to practice social work;

(2) use illegal drugs of any kind; or

(3) promote, encourage, or concur in the illegal use or possession of alcohol or drugs.

§781.409. Client Records and Record Keeping.

Following applicable statutes, the licensee shall:

(1) keep accurate and legible records of the dates of services, types of services, progress or case notes, intake assessment, treatment plan, and billing information;

(2) retain and dispose of client records in such a way that confidentiality is maintained;

(3) in independent practice, establish a plan for the custody and control of the licensee's client mental health records in the event of

the licensee's death or incapacity, or the termination of the licensee's professional services;

(4) keep client records for five years for adult clients and five years beyond the age of 18 for minor clients;

(5) at the request of a client, a client's guardian, or a client's parent (sole managing, joint managing or possessory conservator) if the client is a minor, provide, in plain language, a written explanation of the types of treatment and charges for counseling treatment intervention previously made on a bill or statement for the client (this requirement applies even if the charges are to be paid by a third party);

(6) comply with the requirements of Texas Health and Safety Code, Chapter 611, concerning the release of mental health records; and

(7) be responsible for services rendered when providing approval by signature for services rendered by another individual who may or may not be licensed.

§781.410. Billing and Financial Relationships.

(a) A licensee shall not intentionally or knowingly offer to pay or agree to accept any remuneration directly or indirectly, overtly or covertly, in cash or in kind, to or from any person, firm, association of persons, partnership, corporation, or entity for securing or soliciting clients or patronage for or from any health care professional.

(b) In accordance with the provisions of the Act, §505.451, a licensee is subject to disciplinary action if the licensee directly or indirectly offers to pay or agrees to accept remuneration to or from any person for securing or soliciting a client or patronage.

(c) A licensee employed or under contract with a chemical dependency facility or a mental health facility, shall comply with the requirements in the Texas Health and Safety Code, §164.006, relating to soliciting and contracting with certain referral sources. Compliance with the Treatment Facilities Marketing Practices Act, Texas Health and Safety Code, Chapter 164, shall not be considered as a violation of state law relating to illegal remuneration.

(d) A licensee shall bill clients and/or third parties for only those services actually rendered by the licensee.

(e) Relationships between a licensee and any other person used by the licensee to provide services to a client shall be so reflected on billing documents.

(f) A licensee may not knowingly or flagrantly overcharge a client.

(g) A licensee may not submit to a client and/or a third payor a bill for services that the licensee knows were not provided or knows were improper, unreasonable or unnecessary, with the exception of a missed appointment.

§781.411. Client Confidentiality.

(a) Communication between a licensee and client and the client's records, however created or stored, are confidential under the provisions of the Texas Health and Safety Code, Chapter 181, Texas Health and Safety Code, Chapter 611, and other state or federal statutes or rules, including court room rules of evidence, where such statutes or rules apply to a licensee's practice.

(b) A licensee shall not disclose any communication, record, or identity of a client except as provided in Texas Health and Safety Code, the Health Insurance Portability and Accountability Act (HIPAA), and/or other state or federal statutes or rules, as applicable.

(c) A licensee shall comply with Texas Health and Safety Code, Chapter 611, concerning access to mental health records.

(d) A licensee shall have written permission for release of information for clients. The written release should include:

(1) name and identifying information of the client;

(2) the purpose of the release of information;

(3) whom the information is being released to;

(4) duration the release is intended to be enforced; and

(5) the signature of the client or guardian representative.

(e) The written release of information should be maintained in the permanent client record and should be reviewed and update regularly.

(f) A licensee shall report information if required by any of the following statutes:

(1) Texas Family Code, Chapter 261, concerning abuse or neglect of minors;

(2) Texas Human Resources Code, Chapter 48, concerning abuse, neglect, or exploitation of elderly or disabled persons;

(3) Texas Health and Safety Code, §161.131 et seq., concerning abuse, neglect, and illegal, unprofessional, or unethical conduct in an in-patient mental health facility, a chemical dependency treatment facility or a hospital providing comprehensive medical rehabilitation services; and

(4) Texas Civil Practice and Remedies Code, §81.006, concerning sexual exploitation by a mental health services provider.

(g) A social worker shall follow the rules of confidentiality set forth in the Health and Safety Code, Chapter 611, and other applicable laws.

(h) A licensee may take reasonable action to inform medical or law enforcement personnel if the professional determines that there is a probability of imminent physical injury by the client to the client or others, or there is a probability of immediate mental or emotional injury to the client in accordance with the Texas Health and Safety Code, Chapter 611.

§781.412. Licensees and the Board.

(a) Any person licensed as a social worker is bound by the provisions of the Act and this chapter.

(b) A social worker shall report alleged misrepresentations or violations of this chapter to the board's executive director.

(c) The licensee shall report any and all name changes, address changes, or employment setting changes to the board within 30 days.

(d) The board is not responsible for any lost or misdirected mail if sent to the address last reported by the licensee.

(e) The board may ask any applicant for licensure as a social worker, whose file contains negative references of good moral character, to come before the board for an interview before the licensure process may proceed.

(f) The board may consider the failure of a social worker to respond to a request from the board or executive director for information or other correspondence as unprofessional conduct and grounds for disciplinary proceedings in accordance with this chapter.

§781.413. Assumed Names.

(a) An individual practice by a social worker may be incorporated in accordance with the Professional Corporation Act, or other applicable law.

(b) When an assumed name is used in any practice of social work, the name of the social worker must be listed in conjunction with the assumed name. An assumed name used by a social worker must not be false, deceptive, or misleading.

§781.414. Consumer Information.

(a) A licensee shall inform each client of the name, address, and telephone number of the board for the purpose of reporting violations of the Act or this chapter on a sign prominently displayed in the primary place of business; or

(b) The board shall make consumer information available to the public.

§781.415. Display of License Certificate.

(a) A social worker shall display the license certificate, issued by the board, in a prominent place at each location of practice.

(b) A social worker shall display only an original of the license certificate issued by the board.

(c) A social worker shall not make any alteration on a license certificate issued by the board.

(d) A social worker shall not display a license certificate issued by the board, which has been reproduced or is expired, suspended, or revoked.

(e) A licensee who elects to copy or allow to be copied a license certificate issued by the board takes full responsibility for the use or misuse of the reproduced license.

§781.416. Advertising and Announcements.

(a) Information used by a social worker in any advertisement or announcement of services shall not contain information which is deceptive, inaccurate, incomplete, or out of context.

(b) The board imposes no restrictions on the advertising medium a social worker uses, including personal appearances, use of personal voice, size or duration of the advertisement or use of a trade name.

(c) All advertisements or announcements of professional services which a licensee offers, including telephone directory listings, shall clearly state the social worker's licensure designation.

(d) A social worker shall not include in advertising or announcements any information or any reference to certification in a field outside of social work or membership in any organization, if that information might confuse or mislead the public as to the services or legal recognition of the social worker.

(e) Information used by a licensee in any advertisement or announcement shall not contain information, which is false, inaccurate, misleading, incomplete, out of context, deceptive or not readily verifiable. Advertising includes, but is not limited to, any announcement of services, letterhead, business cards, commercial products, and billing statements.

(f) A licensee who retains or hires others to advertise or promote the licensee's practice remains responsible for the statements and representations made.

§781.417. Research and Publications.

(a) In research with a human subject, a social worker is responsible for the subject's welfare throughout a project, shall obtain informed consent and take reasonable precautions so that the subject shall suffer no injurious emotional, physical or social effect.

(b) A social worker shall disguise data obtained from a professional relationship for the purposes of education or research to ensure full protection of the identity of the subject client.

(c) When conducting and reporting research, a social worker must give recognition to previous work on the topic as well as observe all copyright laws.

(d) A social worker must give due credit through joint authorship, acknowledgment, footnote statements, Internet sources or other appropriate means to those who have contributed significantly to the social worker's research or publication.

§781.418. Provision of Court Ordered Home Studies, Adoption Studies or Custody Evaluations.

(a) The role of social worker is to assist the parties, their children and the court by maintaining a posture that is both critical and impartial.

(b) Social workers performing such evaluations are required to provide written reports to the parties and the court and to testify under oath as to the factual issues and expert opinions. The social worker should maintain a copy of the report for his/her records in accordance with client records retention as required by §781.409(4) of this title (relating to Client Records and Record Keeping).

(c) Social workers should not use or review previous custody evaluations or home studies in making a recommendation unless instructed to do so by the court or by consent of all parties requesting the evaluation.

(d) The social worker should not perform an evaluation of a child or family in a case where the social worker has previously served or is currently serving in another professional role which may compromise the social worker's objectivity.

(e) Social workers performing evaluations for the Department of Family and Protective Services (DFPS) must meet the criteria established by that agency's Independent Pre-Adoptive Home Screening and Post-Placement Adoptive Report Rules at 40 Texas Administrative Code, Part 19, Chapter 745.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2005.

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Deborah Hammond, LMSW-ACP

Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: June 19, 2005

For further information, please call: (512) 458-7236

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SUBCHAPTER E. LICENSE RENEWAL AND CONTINUING EDUCATION

22 TAC §§781.501 - 781.514

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Social Worker Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The repeals affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

- §781.501. *General.*
- §781.502. *Staggered Renewals.*
- §781.503. *License Renewal.*
- §781.504. *Late Renewal.*
- §781.505. *Inactive Status.*
- §781.506. *Emeritus Status.*
- §781.507. *Active Military Duty.*
- §781.508. *Hour Requirements for Continuing Education.*
- §781.509. *Types of Acceptable Continuing Education.*
- §781.510. *Activities Unacceptable as Continuing Education.*
- §781.511. *Approval of Continuing Education Sponsor.*
- §781.512. *Acceptance of Continuing Education Approved by Another Licensing Board.*
- §781.513. *Credit Hours Granted.*
- §781.514. *Continuing Education Documentation.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Deborah Hammond, LMSW-ACP
Chair

Texas State Board of Social Worker Examiners
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22 TAC §§781.501 - 781.515

The new rules are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The new rules affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.501. General.

- (a) A license must be renewed biennially.
- (b) A person who holds a license must have fulfilled any continuing education requirements prescribed by this chapter in order to renew a license.
- (c) Each person who holds a license is responsible for renewing the license and shall not be excused from paying penalty fees for late renewal. Failure to receive notice from the board does not waive payment of penalty fees.
- (d) The board may deny the renewal of the license of a licensee who is in violation of the Act, or this chapter, at the time of application for renewal.
- (e) A person whose license has expired shall not use the terms or titles described in the Act, §505.351. The person shall return his or her license to the board.
- (f) The deadlines established for renewals, late renewals, and penalty fees are based on the postmarked date of the documentation submitted by the licensee.

(g) The board shall deny renewal if required by the Education Code, §57.491 (relating to Defaults on Guaranteed Student Loans).

(h) The board upon receipt of a final court or attorney general's order will suspend a license due to failure to pay child support per the Family Code, Chapter 232. The individual must pay the reinstatement fee set out in §781.217 of this title (relating to Fees).

(i) A license must be renewed and in good standing prior to the licensee obtaining a different category of licensure.

§781.502. Staggered Renewals.

The board shall use a staggered system for license renewals.

(1) The renewal date of a license shall be the last day of the licensee's birth month.

(2) License fees will be prorated if the licensee's initial renewal date, as determined by the board, occurs less than 12 months after the original date of licensure.

(3) Prorated fees shall be rounded off to the nearest dollar.

§781.503. License Renewal.

(a) At least 45 days prior to the expiration of a license, the board will send notice to a licensee that includes the expiration date of the license, a schedule of the renewal and penalty fees, and continuing competency activities needed to complete the renewal requirements.

(b) A license renewal form shall be furnished to licensees eligible for renewal. The form shall require the licensee to provide current addresses; telephone numbers; continuing education completed; a signed statement regarding any civil lawsuits, criminal cases and convictions or any complaints against, investigations involving, or actions against the licensee by any licensing or certification body; and a statement of continuing compliance with the Act and this chapter.

(c) The executive director will respond in writing to the application for renewal within 15 working days of initial receipt and of receipt of a completed application (if the initial application is deficient) notifying the applicant that his or her license is renewed, that the application is deficient, or that renewal is proposed for denial. Failure to process a renewal application in the time periods stated shall be governed by §781.305(h) and (i) of this title (relating to Application for Licensure).

(d) The board shall renew the license of a social worker whom has met all requirements for renewal including payment of all fees and submission of documentation of completion of all required continuing education.

(e) If a licensee has made timely and sufficient application for renewal, the license does not expire until the board has acted on the renewal. If the licensee claims to have made timely and sufficient application and is otherwise eligible for license renewal, his or her license will be considered to be current until the renewal is issued or until the board office receives the information that timely and sufficient application was not made.

(f) A licensee who has been recommended for disciplinary action must file a timely and complete application for license renewal. If the licensee fails to pay all fees or to document completion of required continuing education he or she must cease all social work practice until all requirements for license renewal are complete.

(g) The board may deny the renewal of a license if the licensee is a party to a formal disciplinary action. A formal action commences when the notice described in §781.602(c) of this title (relating to Disciplinary Action and Notices) is mailed by the board.

(h) A license that is not revoked or suspended as a result of formal proceedings shall be renewed provided that all other requirements are met.

(i) In the case of delay in the license renewal process because of formal disciplinary action, penalty fees shall not apply.

(j) If a complaint against a licensee is in process on the date that his or her license renewal is due:

(1) a notice will be sent to the licensee, certified mail return receipt requested to the mailing address on file with the board, requiring the licensee to renew his or her license or return his or her license to the board;

(2) the notice will state that the complaint process will continue until its final resolution or if the license is renewed; and

(3) unless the return receipt is received by the board, receipt of the notice will be presumed to have occurred as provided in §781.602 of this title.

§781.504. Late Renewal.

(a) A person who fails to meet all the requirements to renew his or her license by the renewal date ceases to be licensed.

(b) A person who renews a license after the expiration date but on or before 90 days after the expiration date shall pay the renewal fee and appropriate penalty fees.

(c) If a person has not renewed a license for more than 30 days after the date of expiration, the board shall inform the person of the expiration date of the license and the amount of the fee required for renewal.

(d) The board shall notify a person whose license is expired that the person may not practice social work or otherwise violate the Act.

(e) A person whose license was not renewed on or before 90 days from the expiration date may renew within one year of the expiration date by paying the appropriate renewal and penalty fees.

(f) If a person did not have the required continuing education at the time of expiration of the license, the person shall file evidence of completion of the required continuing education before the license can be renewed.

(g) The continuing education may have been earned during the continuing education period or within the one-year period following expiration.

(h) The evidence of continuing education shall be the completed continuing education form and other documentation required by the board.

(i) On or after one year from the expiration date, a person may no longer renew the license and must reapply by submitting a new application, paying the required fees, and meeting the current requirements for the license including passing the licensure examination.

§781.505. Inactive Status.

(a) A licensee whose license has not lapsed, but who is not employed to provide social work services in Texas, is eligible for inactive status. The request for inactive status may be made to the board at any time prior to the lapse of the license.

(b) No continuing education is required of a licensee while on inactive status.

(c) The inactive status fee and any applicable renewal fee and penalty fee for late renewal must be paid prior to the date the license lapses.

(d) A person must notify the board in writing to reactivate the person's status. Reactivation status shall begin on the first day of the month following payment of the license fee. The license fee shall be prorated to the next renewal date in accordance with §781.502 of this title (relating to Staggered Renewals).

§781.506. Emeritus Status.

(a) A licensee who is at least 55 years of age, or disabled, and who is not engaged in professional social work practice, is eligible for an emeritus license. The request for emeritus status must be submitted in writing to the board.

(b) On receipt of the request the board will issue an emeritus license that will remain valid for the lifetime of the licensee. No renewal fee or continuing education will be required.

(c) The emeritus licensee may only use his or her emeritus title in the provision of social work services as a volunteer. The emeritus social worker may not receive any compensation for social work services.

(d) An emeritus license can be reinstated to an active license without being subject to the additional penalty for late renewal of a license. To be eligible for a new license, the person would be required to submit an updated application and the application and license fee. Submission of verification of education, supervision, and examination score is not required.

§781.507. Active Military Duty.

(a) A licensee on active duty with the Armed Forces of the United States who is not practicing in the State of Texas at the time of renewal is exempt from the renewal requirement and may, within one year of his or her return to Texas or release from active duty, whichever occurs first, request reinstatement of his or her license.

(b) The board will issue a license on receipt of the request for reinstatement, documentation of his or her active duty status at the time the license expired, and the fee for the current license. No continuing education will be required prior to reinstatement and no penalty fees will be charged.

§781.508. Hour Requirements for Continuing Education.

(a) A licensee must complete:

(1) 30 clock hours of continuing education annually from board approved providers. A clock hour is defined as 60 minutes of standard time; and

(2) a minimum of three hours of continuing education biennially in professional ethics and social work values each year as part of the required 30 clock hours. A licensee may earn credit for ethics hours as a presenter or participant.

(b) On petition by a licensee, the executive director may waive part, but not all, of the continuing education renewal requirements for good and just cause or may permit the licensee an additional period of time in which to complete all continuing education requirements. In all cases, the decision of the executive director may be appealed to the Professional Development Committee of the board. Should the committee overturn the decision of the executive director, the committee may elect to waive the late fees accrued or determine that the late fees should be paid by the licensee. Should the decision of the executive director be upheld by the committee and the licensee be denied in the appeal, all late fees accrued will apply.

§781.509. Types of Acceptable Continuing Education.

Continuing education undertaken by a licensee shall be acceptable to the board as credit hours if the education falls in one or more of the following categories:

(1) participating in institutes, seminars, workshops, conferences, independent study programs, post graduate training programs, college academic or continuing education courses which are related to or enhance the practice of social work and are offered or sponsored by a board approved provider;

(2) teaching or presenting the activities described in paragraph (1) of this section;

(3) writing a published work or making a presentation directed toward or applicable to the profession of social work;

(4) providing professional guidance as a field instructor for social work interns in connection with a college or university accredited by or in candidacy status with CSWE; or

(5) providing supervision to a social worker participating in the program in accordance with §781.313 of this title (relating to the Alternative Method of Examining Competency (AMEC) Program).

§781.510. Activities Unacceptable as Continuing Education.

The board will not give credit hours for:

(1) education incidental to the regular professional activities of a social worker such as learning occurring from experience or research;

(2) organizational activity such as serving on committees or councils or as an officer in a professional organization;

(3) meetings and activities such as in service programs which are required as a part of one's job unless the in service training is a type of acceptable continuing education under §781.509 of this title (relating to Types of Acceptable Continuing Education);

(4) college academic courses which are audited or not taken for credit; or

(5) any experience which does not fit the types of acceptable continuing education in §781.509 of this title.

§781.511. Approval of Continuing Education Sponsor.

(a) A sponsor must be approved under this section to offer continuing education programs.

(b) A person seeking approval as a continuing education sponsor shall file an application on board forms and include the continuing education sponsor application fee. Governmental agencies shall be exempt from paying this fee.

(c) Entities that receive automatic status without application or fee as approved providers are:

(1) accredited colleges and universities;

(2) a national or statewide association, board or organization representing members of the social work profession;

(3) nationally accredited health or mental health facilities;
or

(4) a person or agency approved by any state or national organization in a related field such as medicine, psychiatry, psychology, sociology, marriage and family therapy, and similar field of human service practice.

(d) The applicant shall certify on the application that:

(1) all programs offered by the sponsor for credit hours from the board will comply with the criteria in this section; and

(2) the sponsor will be responsible for verifying attendance at each program and provide a certificate of attendance as set forth in subsection (k) of this section.

(e) A program offered by a sponsor for credit hours from the board shall:

(1) contribute to the advancement, extension and enhancement of the professional skills and knowledge of the licensee in the practice of social work;

(2) be developed and presented by persons who are appropriately knowledgeable in the subject matter of the program and training techniques;

(3) specify the course objectives, course content and teaching methods to be used;

(4) specify the number of credit hours; and

(5) specify the number of credit hours in ethics and values separately and as part of the total hours credited.

(f) The sponsor must document each program's compliance with subsection (d) of this section and maintain that documentation for a period of three years.

(g) The executive director will review the continuing education sponsor application and notify the applicant of any deficiencies or grant approval and indicate the continuing education sponsor approval number to be noted on all certificates of attendance.

(h) Each continuing education program shall provide a mechanism for evaluation of the program by the participants. The evaluation may be completed on-site immediately following the program presentation or an evaluation questionnaire may be distributed to participants to be completed and returned to the sponsor by mail. The sponsor and the instructor, together, shall review the evaluation outcomes and revise subsequent programs accordingly. The sponsor shall keep all evaluations for three years and allow the board to review the evaluations on request.

(i) An approved sponsor may subcontract with individuals or organizations to provide continuing education programs. The sponsor must insure that the subcontractor meets all requirements of this section. The Sponsor will provide a listing of subcontractors utilized as part of the renewal process.

(j) To maintain approval as a sponsor, each sponsor shall submit to the board annually an application for renewal of the approved provider status and a application fee if applicable.

(k) It shall be the responsibility of a sponsor to provide each participant in a program with a legible certificate of attendance. The certificate of attendance shall contain:

(1) the name of the sponsor and approval number;

(2) the name of the participant;

(3) the title of the program;

(4) the number of credit hours given, including ethics hours credited;

(5) the date and place of the program;

(6) the signature of the sponsor or its representative; and

(7) board contact information.

(l) The sponsor shall maintain attendance records for not less than two years.

(m) The sponsor shall be responsible for assuring that no licensee receives continuing education credit for time not actually spent attending the program.

(n) Upon the failure of a sponsor to comply with any of the requirements of this section, the board, after notice to the sponsor and a due process hearing, may revoke the sponsor's approval status.

(o) The board may evaluate any approved sponsor or applicant at any time to ensure compliance with requirements of this section.

(p) Complaints regarding continuing education programs offered by approved providers may be submitted in writing to the executive director.

§781.512. Removal of Continuing Education Sponsorship Status.

(a) The board retains the right to remove the approval status of a continuing education sponsor.

(b) The board may remove a sponsor who is not in compliance with board requirements at the time of renewal.

(c) A sponsor removed by the board may reapply the 91st day following the board action.

(d) The executive director shall review complaints regarding the compliance with board requirements of a continuing education sponsor for possible action.

(e) Sponsors removed or denied may request a review by the Professional Development Committee.

(f) Continuing education hours received from a sponsor who has been removed or denied by the board but accepted by another licensing or approval entity shall not be acceptable for use of renewal of the social worker license.

(g) Continuing education hours received from sponsors who failed to meet the renewal requirements of the board shall not be acceptable for use in the renewal of the social worker's license.

(h) Fees paid by a sponsor who has been removed or denied are non-refundable.

(i) The Professional Development Committee shall review reapplication by a formerly approved or denied sponsor.

§781.513. Acceptance of Continuing Education Approved by Another Licensing Board.

(a) A licensee may request in writing that the board consider approval of continuing education hours provided by a non-approved provider. The licensee shall submit documentation as specified in §781.511(e) of this title (relating to Approval of Continuing Education Sponsor) for the board to review and a fee equal to the continuing education sponsor application fee.

(b) The executive director will review the documentation and notify the licensee in writing whether the program(s) are acceptable as credit hours. In all cases, the decision of the executive director may be appealed to the Professional Development Committee of the board.

§781.514. Credit Hours Granted.

The board will grant the following credit hours toward the continuing education requirements for license renewal.

(1) One credit hour will be given for each hour of participation in a continuing education program by an approved provider.

(2) Credit may be earned, post-licensure, through successfully completing postgraduate training programs (e.g., intern, residency, or fellowship programs) or successfully completing social work related courses which are part of the curriculum of a graduate school of social work at a rate of five credit hours per each semester hour or its equivalent not to exceed 10 hours per renewal period. A licensee may complete the ethics requirement in §781.508(a)(2) of

this title (relating to Hour Requirements for Continuing Education) only through a course specifically designated as an ethics course.

(3) Credit may be earned for teaching social work courses in an accredited college or university. Credit will be applied at the rate of five credit hours for every course taught, not to exceed 15 hours per renewal period. A licensee may complete the ethics requirement in §781.508(a)(2) of this title only through teaching a course specifically designated as an ethics course.

(4) A field instructor for a social work intern will be granted five credit hours for each college semester completed, not to exceed 20 credit hours per renewal period.

(5) A presenter of a continuing education program or an author of a published work, which imparts social work knowledge and skills, may be granted five credit hours for each original or substantially revised presentation or publication, not to exceed 10 credit hours per renewal period.

(6) Credit hours may be earned by successful completion of an independent study program directly related to social work offered or approved by an approved provider. With the exception of persons residing outside the United States, a maximum of 10 credit hours for independent study programs will be accepted per renewal period.

(7) A licensee may carry over to the next renewal period up to 10 credit hours earned in excess of the continuing education renewal requirements. Continuing education earned during the licensee's birth month may be used for the current renewal or for the following year.

§781.515. Continuing Education Documentation.

(a) Credit hours must be listed on the license renewal form supplied by the board. Failure to submit the form or failure to complete the required continuing education is grounds for denial of the application for license renewal.

(b) A random sample of renewal applications will be selected for review.

(c) Documentation of continuing education listed on the renewal form must be retained for three years.

(d) A licensee who is selected for review will be notified by mail and required to submit acceptable documentation of the continuing education listed on the continuing education report form. Acceptable documentation includes the following:

(1) copies of continuing education certificates of attendance or other form of verification from the provider of the continuing education program;

(2) grade reports or transcripts verifying the completion of a college course;

(3) letters from the dean or department head or his or her authorized representative verifying the teaching or field instructor assignment;

(4) letters from the program sponsor verifying participation as a presenter in a continuing education program or a copy of the program; or

(5) copies of continuing education programs and other documentation as necessary to establish the relevance of its content to social work practice for any continuing education program which does not have an approved provider number.

(e) All forms of verification must include the subject, date(s), credit hours given and name of the sponsor, board issued sponsor approval number or other identifying sponsor information and board contact information (if applicable).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chair

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SUBCHAPTER F. COMPLAINTS AND VIOLATIONS

22 TAC §§781.601 - 781.610

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Social Worker Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The repeals affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.601. *Purpose.*

§781.602. *Disciplinary Action; Notices.*

§781.603. *Complaint Procedures.*

§781.604. *Ethics Committee Meetings and Policy.*

§781.605. *Informal Hearing Meetings.*

§781.606. *Licensing of Persons with Criminal Backgrounds.*

§781.607. *Suspension, Revocation, or Nonrenewal.*

§781.608. *Informal Disposition.*

§781.609. *Default Orders.*

§781.610. *Monitoring of Licensees.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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22 TAC §§781.601 - 781.610

The new rules are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The new rules affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.601. Purpose.

The purpose of this Subchapter is to set out grounds for denial of an application or discipline of a licensee and the procedures for reporting alleged violations of the Act or this chapter.

§781.602. Disciplinary Action and Notices.

(a) The board shall revoke, suspend, suspend on an emergency basis, or deny a license or order of recognition, place on probation a person whose license or order of recognition has been suspended, or reprimand a person with a license or order of recognition for any of the following reasons:

(1) violation of any provision of the Act;

(2) violation of any rule adopted by the board;

(3) failure to cooperate in the investigation of a complaint filed under the provisions of this chapter;

(4) physical or mental incompetency to perform social work services as determined by the board;

(5) provision of false or misleading information to the board regarding his or her qualifications for licensure or renewal or to an inquiry by the board;

(6) any of the grounds described in the Act, §505.021(a);
or

(7) violation of law or rules of another health or mental health profession resulting in disciplinary action by the regulatory body of that profession.

(b) Prior to institution of formal disciplinary proceedings against a licensee, the board shall give written notice to the licensee by certified mail, return receipt requested or registered mail. The notice of violation letter will include the facts or conduct alleged to warrant revocation, suspension, or reprimand and the severity level from the sanction guide. The licensee shall be given the opportunity, as described in the notice, to show compliance with all requirements of the Act and this chapter.

(c) The licensee or applicant must request, in writing, a formal hearing within 10 days of receipt of the notice, or the right to a hearing shall be waived and the license or recognition shall be denied, revoked, suspended, probated, or reprimanded.

(d) Receipt of a notice under subsection (b) or (c) of this section is presumed to occur on the tenth day after the notice is mailed to the last address known to the board unless another date is reflected on a United States Postal Service return receipt or other official receipt.

(e) The licensee will be considered to have received notice of board disciplinary action if the notice is mailed to the last address provided in writing to the board by the licensee.

(f) If a notice is mailed to the last known address of the licensee, and the licensee fails to respond to the notice within 10 days from receipt of the notice, the licensee will be considered to have waived his or her right to a hearing in the matter.

§781.603. Complaint Procedures.

(a) A person wishing to report an alleged violation of the Act or this chapter by a licensee or other person shall notify the executive director. The initial notification may be in writing, by telephone, or by personal visit to the board office.

(b) The executive director will be responsible for the receipt and processing of complaints. The executive director will maintain a log of the receipt, investigation and disposition of all complaints. The board chairperson will appoint an ethics committee to work with the executive director.

(c) The board office shall not accept a complaint if the official form is not filed within five years of the date of termination of the professional-client relationship which gave rise to the alleged violations or five years from the date the complainant learned the behavior of the social worker was a violation of the rules and/or law. If the client was a minor at the time of the alleged violation, this time limitation does not begin to run until the client reaches the age of 18 years. A complainant shall be notified of the non-acceptance of untimely complaints.

(d) The board may waive the time limitation in cases of egregious acts or continuing threats to public health or safety when presented with specific evidence that warrants such action.

(e) On receipt of a complaint, the executive director shall send an acknowledgment letter. If the complaint is not in the form of a sworn statement, a copy of applicable rules, and an official form will be included with the letter of acknowledgment and further action on the complaint may, at the discretion of the executive director, be delayed until a sworn statement is received. The executive director may accept an anonymous complaint or a complaint that is not a sworn statement if there is sufficient information for the investigation; however, the executive director shall then complete a complaint form under oath.

(f) Within 15 days of the receipt of a complaint, the executive director shall review the complaint to assure that there is sufficient information to initiate an investigation and that the allegations contained in the complaint fall within the board's jurisdiction. If the complaint is against a person licensed by another board, the executive director will forward the complaint to that board not later than the 15th day after the date the agency determines that the information should be referred to the appropriate agency as provided in Government Code, Chapter 774.

(g) If the allegations do not fall within the board's jurisdiction, the executive director shall refer the complaint to the Ethics Committee. Based on its review of the complaint, the Ethics Committee may instruct the executive director to:

(1) close the complaint with a letter to the complainant explaining why the complaint is not within the board's jurisdiction; or

(2) advise the complainant of the additional information necessary to initiate an investigation.

(h) If the allegations in the complaint are within the board's jurisdiction and sufficient for investigation, the executive director shall:

(1) evaluate the threat to public health and safety documented by the complaint;

(2) establish an appropriate plan and schedule for its investigation to be noted in the complaint log;

(3) notify all parties, as appropriate, to the circumstances of the complaint, that an investigation has been initiated, and provide a copy of the board's policy regarding the time frame for conducting an investigation; and

(4) report the status of all continuing investigations to the complainant and the licensee or applicant every 90 days.

(i) The executive director will initiate the investigation of a complaint by requesting statements and evidence from all parties; by requesting that the complaint investigation be conducted by a department investigator; or may enlist the service of a private investigator.

(j) If an investigation is assigned to an investigator, the executive director will request a written report of the progress of the investigation at least two weeks before each meeting of the ethics committee until the investigation is complete and will provide a copy of the report to the committee.

(k) If an investigation uncovers evidence of a criminal act, the appropriate law enforcement officials will be notified only with approval of the executive director or the Ethics Committee. In any case, the complaint process will continue to its completion unless a written request is received from a law enforcement agency requesting that action on the complaint be delayed, stating the reason for requesting the delay, and stating an anticipated date by which that agency plans to take action on the case.

(l) If a law enforcement agency has requested a delay in the complaint process in writing, the executive director will request timely updates on that agency's progress in bringing the matter to a close.

(m) The executive director will inform the board if the services of a private investigator are needed for the timely completion of a complaint investigation or for any other reason.

(n) The subject of the complaint will be notified of the allegations either in writing, by phone or in person by the executive director or the investigator assigned to the case and will be required to provide a sworn response to the allegations within two weeks of that notice. Failure to respond to the allegations within the two-week period is evidence of failure to cooperate with the investigation and subject to disciplinary action.

(o) The ethics committee will review the complaint log to ensure that:

(1) complaint investigations are being handled in a timely manner;

(2) complaints are not dismissed without appropriate consideration;

(3) a person who files a complaint has an opportunity to explain the allegations made in the complaint; and

(4) any issues related to complaints which arise under the Act, or this chapter, are resolved.

(p) The ethics committee shall determine whether a violation exists and whether to dismiss the complaint as unsubstantiated or to consider appropriate disciplinary action.

(q) If a violation is found but it does not seriously affect the health and safety of clients or other persons, the committee may resolve the complaint by informal methods such as a cease and desist order or an informal agreement with the violator to correct the violation.

(r) If the complaint is not resolved by the committee, the committee may recommend that disciplinary action be taken or that other appropriate action as authorized by law be taken, including injunctive relief or civil penalties. Action may be taken based on the allegations in the complaint or any violations found during investigation.

(s) If no violation exists or the complaint is dismissed as unsubstantiated, the complainant and the licensee or applicant shall be notified in writing of the finding. The committee may include in that notice a statement of issues and recommendations that the committee wishes to bring to the attention of the subject of the complaint.

(t) If the executive director receives credible evidence that a licensee is engaging in acts that pose an immediate and significant threat of physical or emotional harm to the public, the executive director shall consult with the members of the ethics committee for authorization for an emergency suspension of the license.

§781.604. Ethics Committee Meetings and Policy.

(a) The Ethics Committee will meet on a regular basis to review and recommend action on complaints filed against social workers.

Additionally, the committee will hold informal hearings to review previous committee actions at the request of a party to a complaint.

(b) An agenda and completed reports of complaint investigations will be sent to committee members approximately two weeks prior to each meeting. The agenda will list all items to be considered by the committee. Complaints will be listed on the agenda by the assigned complaint tracking number.

(c) Persons who are not members of the committee are permitted to observe committee work unless the committee enters into executive session for legal consultation. Committee members, staff, consultants and licensees against whom the complaint is filed and the person filing the complaint may participate in the discussion of a complaint pending action before the committee. The committee chair or committee by vote may impose time limitations on discussion.

(d) A report on all completed investigations will be provided to committee members. The report will include copies of information obtained in the investigation and a summary sheet with a staff recommendation for the disposition for each case. Cases will be grouped on the agenda according to their recommended disposition. Cases that are recommended for closure will be listed together as a consent agenda item. Any committee member, consultant, or staff person may remove cases from the consent agenda for individual review upon request. All cases left on the consent agenda will be voted on as a group for closure. All other cases will be considered on an individual basis.

(e) The committee will base its decision regarding the validity of a complaint on the evidence documented in the report of the investigation. The committee may find that there is or is not evidence of a violation of licensing law or rules or the committee may request additional information of a case for later review. If the committee finds that a social worker has violated licensing law or rules, the committee will consider the established policy guidelines and other relevant factors in their recommendation of disciplinary action.

(f) All parties to a complaint will be notified of the findings and recommendations of the committee. Any party to the complaint who disagrees with the action of the committee may submit a written statement of the reasons for his or her disagreement, and may request an informal hearing before the committee. Request for an informal hearing must be made within 10 days of the date of the letter stating the disposition of the case.

§781.605. Informal Hearing Meetings.

(a) Informal hearings will be scheduled for the next meeting of the complaints committee meeting consistent with public notice requirements. All parties to the complaint will be notified of the date and location of the informal hearing and of their right to be heard at that meeting or to submit relevant material to the committee for their review.

(b) All parties to the complaint will be given an opportunity to make a statement to the committee. Based on the evidence, the committee may revise its findings and recommendation as appropriate or reaffirm its original action. All parties to the complaint will be notified of the committee's decision.

(c) The board's legal counsel or an attorney from the department's Office of General Counsel shall attend each settlement conference.

§781.606. Licensing of Persons with Criminal Backgrounds.

(a) The board may take action against a licensee or deny a license pursuant to Texas Occupations Code, Chapter 53, concerning felony or misdemeanor convictions, or the Act, §505.451(12), concerning felony convictions.

(b) The following felonies and misdemeanors relate to licensure as a social worker because these criminal offenses indicate an inability or a tendency to be unable to perform as a social worker:

- (1) a violation of the Act;
- (2) failure to report child abuse or neglect;
- (3) a misdemeanor involving deceptive business practices;
- (4) the offense of assault or sexual assault;
- (5) the felony offense of theft; or

(6) any other misdemeanor or felony which would indicate an inability or a tendency to be unable to perform as a social worker.

(c) An applicant or licensee with a criminal background may provide or be requested to provide documentation of rehabilitation for consideration by the appropriate committee of the board.

(d) Documentation of rehabilitation may include the following:

- (1) court records related to the conviction;
- (2) documents related to the sentence imposed by the court;
- (3) documents of completion of the sentence;
- (4) documents of satisfactory completion of probation or parole;
- (5) information about subsequent good conduct;
- (6) letters of support from employers or others who have knowledge of the applicant's accomplishments following the conviction; and

(7) any other information that supports the applicant's qualifications for a license.

(8) summary of the arresting event and conditions which lead to the event.

(e) The licensee may be referred to the appropriate board committee for review and determination of eligibility or monitoring requirements. Licensees referred to the board are afforded due process under the APA.

§781.607. Suspension, Revocation, or Non-renewal.

(a) If the board suspends a license or recognition, the suspension shall remain in effect for the period of time stated in the order or until the board determines that the reason for the suspension no longer exists.

(b) While on suspension, the licensee shall comply with the renewal requirements in this chapter including payment of fees and completion of continuing education; however, the suspension shall remain in effect pursuant to subsection (a) of this section.

(c) Upon revocation, suspension or non-renewal of a license, a licensee shall return his or her license to the board.

§781.608. Informal Disposition.

(a) If a licensee agrees to the disciplinary action proposed by the ethics committee, an agreed order shall be prepared by the board office or the board's legal counsel and forwarded to the licensee or applicant. The order shall contain agreed findings of fact and conclusions of law.

(1) The licensee or applicant shall execute the order and return the signed order to the board office within 10 days of his or her receipt of the order.

(2) If the licensee or applicant signs and accepts the recommendations, the agreed order shall be submitted to the entire board for its approval. Placement of the agreed order on the board agenda shall constitute only a recommendation for approval by the board.

(3) If the licensee or applicant fails to return the signed order within the stated time period, the inaction shall constitute rejection of the settlement recommendations.

(4) If the licensee or applicant rejects the proposed settlement, the matter shall be referred to the executive director for appropriate action.

(b) The licensee or applicant shall be notified of the date, time, and place of the board meeting at which the proposed agreed order will be considered. Attendance by the licensee or applicant is voluntary.

(c) Upon an affirmative majority vote, the board shall enter an agreed order approving the accepted settlement recommendations. The board may not change the terms of a proposed order but may only approve or disapprove an agreed order unless the licensee or applicant is present at the board meeting and agrees to other terms proposed by the board.

(d) If the board does not approve a proposed agreed order, the licensee or applicant and the complainant shall be so informed. The matter shall be referred to the executive director for other appropriate action.

(e) A proposed agreed order is not effective until the full board has approved the agreed order. The order shall then be effective in accordance with the APA.

(f) A licensee's opportunity for an informal conference under this section shall satisfy the requirement of the APA, §2001.054(c).

§781.609. Default Orders.

(a) If a right to a hearing is waived under §781.602(c) of this title (relating to Disciplinary Action; Notices) or §781.703(b) of this title (relating to Notice), the board shall consider an order taking disciplinary action as described in the written notice to the licensee or applicant.

(b) The licensee or applicant and the complainant shall be notified of the date, time, and place of the board meeting at which the default order will be considered. Attendance is voluntary.

(c) The board's legal counsel or any attorney from the department's Office of General Counsel shall attend the board meeting.

(d) Upon an affirmative majority vote, the board shall enter an order imposing appropriate disciplinary action.

§781.610. Monitoring of Licensees.

(a) The executive director shall maintain a disciplinary action tracking system.

(b) Each licensee that has had disciplinary action taken against his or her license or recognition shall be required to submit regularly scheduled reports at intervals appropriate to each individual situation.

(c) The executive director shall review the reports regarding licensees on monitoring as a result of formal disciplinary action and notify the ethics committee if the requirements of the disciplinary action are not met.

(d) The ethics committee may consider more severe disciplinary proceedings if noncompliance occurs.

(e) The board may require monitoring of a licensee who may pose a potential threat to public health or safety, regardless of whether a formal complaint has been received by the board. The board may

require a licensee on monitoring status to comply with specified conditions set forth by the board. A licensee placed on this type of monitoring is not considered to have formal disciplinary action taken against their license, but must comply fully with the order of the board or face possible formal disciplinary action levied by the board. Factors that may constitute a potential threat to public health or safety may include, but are not limited to, reports of chemical abuse by a licensee, mental and/or physical health concerns, and/or criminal activity or allegations, whether pending or in final disposition by a court of law.

(f) Participants of the AMEC program in accordance with §781.311 of this title (relating to Temporary License) shall be considered to be on monitoring status until released by the board and issued a regular license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Deborah Hammond, LMSW-ACP

Chair

Texas State Board of Social Worker Examiners

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SUBCHAPTER G. FORMAL HEARINGS

22 TAC §§781.701 - 781.707

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Social Worker Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The repeals affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.701. *Purpose.*

§781.702. *General.*

§781.703. *Notice.*

§781.704. *Subpoenas.*

§781.705. *Prehearing Conferences.*

§781.706. *Hearing Procedure.*

§781.707. *Action after the Hearing.*

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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◆ ◆ ◆
22 TAC §§781.701 - 781.707

The new rules are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The new rules affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.701. Purpose.

This subchapter covers the formal hearing procedures and practices that will be used by the board in handling denials, suspensions, probations, and revocations of a license and implements the contested case provisions of the APA.

§781.702. General.

(a) The board or ethics committee on its own motion or on request from a licensee or applicant may initiate a formal hearing. A formal hearing and all related proceedings shall be conducted in accordance with the provisions of the APA, applicable state and federal statutes, and this chapter.

(b) The formal hearing shall be held before ALJ.

(c) A formal hearing shall be held in Travis County, Texas, unless otherwise determined by the ALJ or upon agreement of the parties.

(d) The parties to a hearing shall be the applicant or licensee and the ethics committee of the board.

(e) A copy of all pleadings, motions, or any other documents filed with the ALJ shall be provided to all other parties by first class United States mail or personal delivery and certified, in writing, with the names, addresses, date and manner of service of the parties to whom a copy was furnished.

§781.703. Notice.

(a) The ALJ shall ensure that notice of the formal hearing is given in accordance with the notice requirements of the APA.

(b) If a party fails to appear or be represented at a hearing or proceeding after receiving notice:

(1) the ALJ may proceed with the hearing or proceeding or take whatever action is fair and appropriate under the circumstances.

(2) service of the notice of hearing may be sent by certified or registered mail, return receipt requested, to the licensee's last known address as shown by the board's records. This notice will include disclosure, in 10-point, boldface type, of the fact that upon failure of the licensee to appear at the hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of the hearing may be granted by default.

(3) the applicant or licensee is deemed to be in agreement with the allegations and proposed action and to have waived the right to a hearing. Appropriate disciplinary action may be taken by the board.

§781.704. Subpoenas.

(a) On the written request showing good cause by any party to the hearing, the executive director shall issue a subpoena to require the attendance of witnesses or the production of documents. The ALJ may also issue any necessary subpoenas.

(b) A party or witness may seek to quash the subpoena or move for a protective order as provided in the Texas Rules of Civil Procedure.

(c) A witness or deponent who is not a party and who is subpoenaed or otherwise compelled shall be paid for mileage, transportation, meals, and lodging expenses in accordance with current state reimbursement guidelines in effect at the time of the hearing and a fee of \$10 per day in accordance with the APA.

(d) In an investigation of a complaint filed with the department, the board may request the Commissioner of Health or his or her designee to issue a subpoena to compel the attendance of a relevant witness or the production, for inspection or copying, of relevant evidence. Information obtained via subpoena shall not be subject to the Public Information Act, per the Occupations Code, Chapter 505.

§781.705. Pre-hearing Conferences.

(a) The ALJ, on his or her own motion, or the motion of a party, may direct the parties, their attorneys, or representatives to appear at a specified time and place for a conference prior to the hearing for the purpose of:

- (1) the formulation and simplification of issues;
- (2) the necessity or desirability of amending the pleadings;
- (3) the possibility of making admissions or stipulations;
- (4) the procedure at the hearing;
- (5) specifying the number of witnesses;
- (6) the mutual exchange of prepared testimony and exhibits;
- (7) designation of parties; and
- (8) other matters which may expedite the hearing.

(b) The ALJ shall issue whatever orders are necessary to cover the matters or issues.

(c) Any action taken at the pre-hearing conference shall be reduced to writing, signed by the ALJ and the parties, and made a part of the record.

§781.706. Hearing Procedure.

(a) The administrative law judge's (ALJ) duties. The ALJ shall preside over and conduct the hearing. On the day and time designated for the hearing, the ALJ shall:

- (1) convene and call the hearing to order;
- (2) state the purpose of and the legal authority for the hearing;
- (3) announce that a record of the hearing will be made;
- (4) outline the procedure and order of presentation that will be followed;
- (5) administer oaths to those who intend to testify; and
- (6) take any and all other actions as authorized by applicable law and this Subchapter to provide for a fair, just, and proper hearing.

(b) Presentation.

(1) After making the necessary introductory and explanatory remarks on the purpose of and other matters related to the hearing, the ALJ will begin receiving testimony and evidence from the witnesses.

(2) The order of proceeding may be altered or modified by the ALJ either upon agreement of the parties or upon his or her own motion when such action will expedite the hearing without prejudice to any party.

(3) The ALJ may limit the number of witnesses whose testimony will be repetitious. The ALJ may also establish time limits for testimony so long as all viewpoints are given a reasonable opportunity to be expressed.

(4) The ALJ, at his or her discretion, may allow final arguments and shall note the time and close the hearing. The ALJ may hold the record open for a stated number of days for the purpose of receiving additional evidence into the record.

(c) Consolidation. The ALJ, upon his or her own motion or upon motion by any party, may consolidate for hearing two or more proceedings, which involve substantially the same parties or issues. Proceedings shall not be consolidated unless the ALJ finds that such consolidation will be conducive to a fair, just, and proper hearing and will not result in unwarranted expense or undue delay.

(d) Conduct and decorum during the hearing. Every party, witness, attorney, representative, or other person shall exhibit in all hearings proper dignity, courtesy, and respect for the ALJ and all other persons participating in or observing the hearing. The ALJ is authorized to take whatever action he or she deems necessary and appropriate to maintain the proper level of decorum and conduct, including, but not limited to, recessing the hearing to be reconvened at another time or place or excluding from the hearing any party, witness, attorney, representative, or other person for such period and upon such conditions as the ALJ deems fair and just.

(e) Recording the hearing. The ALJ will keep either a stenographic or other taped record of the hearing proceeding. In the event an independently contracted court reporter is utilized in the making of the record of the proceedings, the board shall bear the cost of the per diem or other appearance fee for such reporter. Any party desiring a written transcript of the proceedings shall contract directly with such court reporter and be responsible for payment of same pursuant to the authority of the APA. In those cases when a tape recording of the formal hearing is made, the board shall make such recording available to any party requesting permission to hear or, with appropriate protective measures, allow such recording to be duplicated. Upon appeal of any final order of the board necessitating the forwarding of the record to a court of law, the board may assess the cost of the transcript to the appealing party.

(f) Rules of evidence. The ALJ will apply the Texas Rules of Civil Evidence and also the following rules:

(1) Consolidation. The ALJ may consolidate the testimony of parties or persons if the evidence can be effectively consolidated into one document or the testimony of one witness. The standard by which the ALJ should judge this consolidation is whether each party or person can offer unique or new evidence that has not been previously introduced. Any party, under oath, may make an offer of proof of the testimony or evidence excluded through consolidation by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing.

(2) Exhibits.

(A) Form. The parties shall make a reasonable effort to introduce exhibits, which will not unduly encumber the files and records of the board.

(B) Tender and service. The original of each exhibit offered shall be tendered to the ALJ or a designee for identification and shall be offered to the parties for their inspection prior to offering or receiving the same into evidence.

(C) Excluded exhibits. In the event an exhibit has been identified, objected to, and excluded, it shall be given an exhibit number

for purposes of identification and shall be included in the record under seal.

(D) After the hearing. Unless specifically directed by the ALJ, no exhibit will be permitted to be filed in any proceeding after the conclusion of the hearing except in a reopened hearing or a rehearing.

(3) Admissibility of prepared testimony and exhibits. When a proceeding will be expedited and the interests of the parties will not be prejudiced substantially, evidence may be received in written form. The prepared testimony of a witness upon direct examination, either in narrative or question and answer form, may be incorporated in the record as if read or received as an exhibit, upon the witness being sworn and identifying the same as a true and accurate record of what his or her testimony would be if he or she were to testify orally. The witness shall be subject to clarifying questions and to cross-examination and his or her prepared testimony shall be subject to a motion to strike either in whole or in part.

(4) Offer of proof. When testimony is excluded by the ALJ, the party offering such evidence shall be permitted to make an offer of proof by dictating into the record or submitting in writing the substance of the proposed testimony prior to the conclusion of the hearing, and such offer of proof shall be sufficient to preserve the point for review by the board. The ALJ may ask such questions of the witness as he or she deems necessary to satisfy himself or herself that the witness would testify as represented in the offer of proof. An alleged error in sustaining any objections to questions asked on cross-examination may be preserved without making an offer of proof.

§781.707. Action after the Hearing.

(a) Proposal for decision.

(1) The ALJ shall prepare the proposal and provide copies of the same to all parties.

(2) Each party having the right and desire to file exceptions and briefs shall file them with the ALJ within the time designated by the ALJ.

(3) Parties desiring to do so shall file written replies to these exceptions and briefs as soon as possible after receiving same and within the time designated by the ALJ.

(b) Pleading after close. At any time after the record has been closed in a contested case, and prior to the board's decision becoming final in such case, all briefs, exceptions, written objections, motions, replies to the foregoing, and all other written documents shall be filed with the ALJ.

(c) Final orders or decisions.

(1) The final order or decision will be rendered by the board. The board may deny, suspend, probate, or revoke a license as it deems appropriate and lawful. A decision of the board may include any requirement to be imposed upon the licensee or applicant, which is related to the individual's practice as a licensee and is deemed by the board to be appropriate and lawful.

(2) All final orders shall be signed by the chairperson of the board; however, interim orders may be issued by the ALJ.

(3) To protect the public interest and to ensure that appropriate principles govern the decisions of the board, it is the policy of the board to change a finding of fact or conclusion of law or to modify a proposed order of an ALJ when the proposed order is:

(A) erroneous;

(B) against the weight of the evidence;

(C) based on a misapplication or misinterpretation of laws, rules, or standards;

(D) based on an insufficient review of the evidence;

(E) not sufficient to protect the public interest; or

(F) no appropriate recognition of whether or not rehabilitation of the licensee or application has occurred.

(d) Motion for rehearing. A motion for rehearing shall be addressed to the board and filed with the executive director.

(e) Appeals. All communications regarding any appeal shall be to the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Chair

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SUBCHAPTER H. SANCTION GUIDELINES

22 TAC §§781.801 - 781.807

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas State Board of Social Worker Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin.)

The repeals are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The repeals affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.801. Purpose.

§781.802. Relevant Factors.

§781.803. Severity Level and Sanction Guide.

§781.804. Other Disciplinary Actions.

§781.805. State Office of Administrative Hearings.

§781.806. Probation.

§781.807. Release from Probation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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The new rules are proposed under the Social Work Practice Act, Occupations Code, Chapter 505, which authorizes the board to adopt rules concerning the licensure and practice of social workers.

The new rules affect Occupations Code, Chapter 505. The review of the rules implements Government Code, §2001.039.

§781.801. Purpose.

The schedule of sanctions is adopted by rule pursuant to the Act, §505.254. The schedule is intended to be used by the ethics committee as a guide in assessing sanctions for violations of the Act or this chapter. The schedule is also intended to serve as a guide to administrative law judges, and as a written statement of applicable rules or policies of the Board pursuant to the Government Code. The failure of an administrative law judge to follow the schedule may serve as a basis to vacate or modify an order pursuant to the Government Code. No two disciplinary cases are the same. This schedule is not intended as a substitute for thoughtful consideration of each individual disciplinary matter.

§781.802. Relevant Factors.

(a) When a licensee has violated the Act or this chapter, three general factors combine to determine the appropriate sanction:

(1) the degree of culpability of the licensee;

(2) the harm caused or posed; and

(3) appropriate deterrence.

(b) Special factors are to be considered as set forth below. It is the responsibility of the licensee to bring exonerating factors to the attention of the board or ALJ.

(1) Seriousness of Violation. The following factors are identified:

(A) the nature of the harm caused, or the risk posed, to the health, safety or welfare of the public, such as emotional, physical, or financial;

(B) the extent of the harm caused, or the risk posed, to the health, safety or welfare of the public, such as whether the harm is low, moderate or severe, and the number of persons harmed or exposed to risk; and

(C) the frequency and time-periods covered by the violations, such as whether there were multiple violations and the period of time over which the violations occurred.

(2) Nature of the Violation. The following factors are identified:

(A) the relationship between the licensee and the person harmed, or exposed to harm;

(B) the vulnerability of the person harmed, or exposed to harm;

(C) the degree of culpability of the licensee, such as whether the violation was:

(i) intentional or premeditated;

(ii) due to blatant disregard or gross neglect; or

(iii) resulted from simple error or inadvertence; and

(iv) the extent to which the violation evidences lack of character, such as lack of integrity, trustworthiness, or honesty of the licensee.

(3) Personal Accountability. The following factors are identified:

- (A) admission of wrong or error, and acceptance of responsibility;
- (B) appropriate degree of remorse or concern;
- (C) efforts to ameliorate the harm or make restitution;
- (D) efforts to ensure future violations do not occur; and
- (E) cooperation with any investigation or request for information.

(4) Prevention of Violations. The following factors are identified:

- (A) the sanction required to deter future similar violations by the licensee;
- (B) sanctions necessary to ensure compliance by the licensee of other provisions of the Act or this chapter; and
- (C) sanctions necessary to deter other licensees from such violations.

(5) Miscellaneous Factors. The following factors are identified:

- (A) professional experience at time of violation;
- (B) presence or absence of prior or subsequent violations;
- (C) conduct and work activity prior to and following the violation;
- (D) character references; and
- (E) any other factors justice may require.

§781.803. Severity Level and Sanction Guide.

The following severity levels and sanction guides are based on the relevant factors in §781.802 of this title (relating to Relevant Factors):

(1) Level One--Revocation of license. These violations evidence intentional or gross misconduct on the part of the licensee and/or cause or pose a high degree of harm to the public and/or require severe punishment as a deterrent to the licensee, or other licensees. The fact that a license is ordered revoked does not necessarily mean the licensee can never regain licensure.

(2) Level Two--Extended suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level One violations, but require termination of licensure for a period of not less than one year.

(3) Level Three--Moderate suspension of license. These violations involve less misconduct, harm, or need for deterrence than Level Two violations, but require termination of licensure for some period of time.

(4) Level Four--Probated suspension of license. These violations do not involve enough harm, misconduct, or need for deterrence to warrant termination of licensure, yet are severe enough to warrant monitoring of the licensee to ensure future compliance. Possible probationary terms are set out as in §781.806 of this title (relating to Probation) and may be ordered as appropriate.

(5) Level Five--Reprimand. These violations involve minor misconduct not directly involving the health, safety or welfare of the particular member of the public at issue.

§781.804. Other Disciplinary Actions.

The ethics committee or executive director, as appropriate, may resolve pending complaints by issuance of formal advisory letters informing licensees of their duties under the Act or this chapter, and whether the conduct or omission complained of appears to violate such duties. Such advisory letters may be introduced as evidence in any subsequent disciplinary action involving acts or omissions after receipt of the advisory letters. The ethics committee or executive director, as appropriate, may also issue informal reminders to licensees regarding other licensing matters. The licensee is not entitled to a hearing on the matters set forth in the formal advisory letter or informal reminders, but may make a written response to be included with such letters in the social worker's licensing records.

§781.805. State Office of Administrative Hearings.

In those cases requiring a hearing, the ethics committee, through the executive director, will issue a notice of violation letter to the licensee, and state the severity level and the recommended sanction. The recommended sanction reflects the judgment of the ethics committee based on the information available at that time. It is recognized that the evidence presented at a hearing could indicate a greater or lesser sanction. However, an administrative law judge may not impose a sanction more than one severity level higher or lower than proposed by the ethics committee.

§781.806. Probation.

If probation is ordered or agreed to, the following terms may be required.

(1) General Conditions. There are 12 general conditions of probation. They appear in all disciplinary orders of the social work board that place licensee's on probation and they are presented below:

(A) Obey all laws. The licensee shall obey all federal, state and local laws and rules governing the practice of social work in this state.

(B) Periodic reports. Under penalty of perjury, the licensee shall submit periodic reports as requested by the board on forms provided by the board, stating whether there has been compliance with all the conditions of probation.

(C) Surveillance program. The licensee shall comply with the board's probation surveillance program.

(D) Interview with the board or its designee. The licensee shall appear in person for interviews with the board or its designee at various intervals and with reasonable notice.

(E) Out-of-state practice or residence. In the event the licensee should leave this state to reside or to practice outside the state, the licensee must notify the board in writing of the dates of departure and return. Periods of residency or practice outside this state will not count toward the time of this probationary period. The social work licensing authorities of the jurisdiction to which the licensee is moving or has moved must be promptly notified of the licensee's probationary status in this state. The probationary period will resume when the licensee returns to the state to reside or practice.

(F) Completion of probation. Upon successful completion of probation, the licensee's license will be fully restored by the executive director. The executive director will report this information to the full board at their next scheduled meeting.

(G) Violation of probation. If the licensee violates probation in any respect, the board, after giving formal notice and the opportunity to be heard, may revoke the licensee's license and order of recognition or take other appropriate disciplinary action. The period of probation shall be extended until the matter is final.

(H) Notification of practice settings. The licensee shall promptly notify all settings in which the licensee practices social work in writing of his or her probationary status.

(I) Supervision Restrictions. While on probation, the licensee shall not act as a supervisor or gain any hours of supervised practice required for any license issued by the board.

(J) Costs of Compliance. The licensee is responsible for all costs of compliance with all conditions of probation.

(K) Renewal Requirements. The licensee shall comply with the renewal requirements in the Act and the rules of the board.

(L) General Compliance. The licensee shall follow the Act and the rules of the board.

(2) Special Conditions. There are 13 special conditions of probation. At the discretion of the board, one or more of these conditions may appear in a disciplinary order of the board that places a licensee on probation. The following conditions presented below are suggested wording for disciplinary orders.

(A) Actual Suspension. As part of probation, the license is suspended for a period of (example: one) year beginning the effective day of this order.

(B) Drug/Medication Use. The licensee shall abstain completely from the personal use or possession of controlled substances and dangerous drugs as defined by law, or any drugs requiring a prescription. Orders forbidding the licensee from personal use or possession of controlled substances or dangerous drugs do not apply to medications lawfully prescribed to the licensee for a bona fide illness or condition by a licensed physician.

(C) Alcohol. Abstain from Use. The licensee shall abstain completely from the use of alcoholic beverages.

(D) Body Fluid Testing. The licensee shall immediately submit to body fluid testing, at the licensee's cost, upon the written request of the board or its designee.

(E) Rehabilitation Program. Within (example: 30) days of the effective date of the order, the licensee shall submit to the board for its prior approval a rehabilitation program in which the licensee shall participate at least weekly for at least (example: 50) weeks of the calendar year for the duration of probation. In the periodic reports to the board, the licensee shall provide documented evidence of continuing participation in this program including the dates of the weekly meetings attended and the address of each meeting. At the end of the required period, the director of the program shall provide the board with documented evidence concerning the licensee's completion of the program and arrangements for appropriate follow-up.

(F) Community Service. Within (example: 60) days of the effective date of the order, licensee shall submit to the board for its prior approval a community service program in which the licensee shall provide free social work services on a regular basis to a community or charitable facility or agency for at least (example: 20) hours a month for the first (example: 24) months of probation.

(G) Medical Evaluation Treatment. Within (example: 30) days of the effective date of the order, and on a periodic basis thereafter as may be required by the board or its designee, the licensee shall undergo a medical evaluation by a board approved physician who shall furnish a medical report to the board or its designee. If the licensee is required by the board or its designee to undergo medical treatment, the licensee shall, within (example: 30) days of the requirement notice, submit to the board for its prior approval the name and qualifications of a physician of the licensee's choice. Upon approval of the treating

physician, the licensee shall undergo and continue medical treatment until further notice from the board. The licensee shall have the treating physician submit periodic reports to the board as the board directs. In cases where the evidence demonstrates that medical illness or disability was a contributing cause of the violations, the licensee shall not engage in the practice of social work until notified by the board of its determination that the licensee is medically fit to practice safely.

(H) Psychosocial/Psychological/Psychiatric Evaluation. Within (example: 30) days of the effective date of the decision, and on a periodic basis thereafter as may be required by the board or its designee, the licensee shall undergo evaluation by a licensed professional (social worker, psychologist, or psychiatrist) selected by the board. The evaluator shall furnish a written report to the board or its designee regarding the licensee's judgment and ability to function independently and safely as a social worker and any other information as the board may require. The cost of an evaluation shall be borne by the licensee. The licensee shall execute a release of information authorizing the evaluator to release all information to the board. The evaluation shall be treated as confidential by the board. In cases where the evidence demonstrates that mental illness or disability was a contributing cause of the violations, the licensee shall not engage in the practice of social work until notified by the board of its determination that the licensee is medically fit to practice safely.

(I) Ethics Course. Within (example: 60) days of the effective date of the order, the licensee shall select and submit to the board or its designee for prior approval a course in ethics, which the licensee shall take and successfully complete as directed by the board.

(J) Supervision of the Licensee's Practice. Within (example: 30) days of the effective date of this order, the licensee shall submit to the board for its prior approval the name and qualifications of one or more proposed supervisors and a plan by each such supervisor by which the licensee's practice would be supervised. Each proposed supervisor shall be licensed as an LCSW who is a board approved supervisor with expertise in the licensee's field of practice. The supervisor shall submit written reports to the board on a quarterly basis verifying that supervision has taken place as required and including an evaluation of the licensee's performance. It shall be the licensee's responsibility to assure that the required reports are filed in a timely fashion. The licensee shall give the supervisor access to the licensee's fiscal and client records. The supervisor shall be independent, with no current or prior business, professional or personal relationship with the licensee. The licensee shall not practice until the licensee has received notification that the board has approved the licensee's choice as a supervisor. If the supervisor quits or is otherwise no longer available, the licensee shall not practice until the board has approved a new supervisor. All costs of supervision shall be borne by the licensee. Supervision shall consist of at least one hour per week in individual face-to-face meetings.

(K) Psychotherapy. Within (example: 60) days of the effective date of the order, the licensee shall submit to the board for its prior approval the name and qualifications of one or more therapists of the licensee's choice. The therapist shall possess a valid license and shall have had no current or prior business, professional or personal relationship with the licensee. Upon approval by the board, the licensee shall undergo and continue treatment until the board determines that no further psychotherapy is necessary. The licensee shall have the treating psychotherapist submit periodic reports as determined by the board, and notify the board immediately if the therapist believes the licensee cannot safely continue to render services. All cost of therapy shall be the responsibility of the licensee. The licensee shall execute a release of information authorizing the therapist to divulge information to the board.

(L) Education. The licensee shall take and successfully complete such remedial education as the board may require.

(M) Take and Pass Licensure Examinations. The licensee shall take and pass the licensure exam currently required of new applicants for the license possessed by the licensee. The exam shall be taken on a regularly scheduled date. The licensee shall pay the established examination fee.

(N) Other Conditions. The board may order other terms of probation as may be appropriate.

§781.807. Release from Probation.

On completion of the terms of board order, the licensee shall petition the executive director or board for an unrestricted license. The petition shall be in writing and shall include documentation and statements from the supervisor, if one was appointed, and any other parties designated in the terms of the board order that the terms of the board order have been fulfilled and that the licensee is qualified for unrestricted practice under the terms of the license.

(1) If the executive director is satisfied that the terms of the probation have been fulfilled, the executive director shall notify the licensee that the restrictions for the license have been removed and make a report to the board at their next scheduled meeting.

(2) If the executive director is not satisfied that the terms of the probation have been fulfilled, the executive director shall notify the licensee and shall bring the petition before the ethics committee for their review and recommendations.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2005.

TRD-200501874

Deborah Hammond, LMSW-ACP
Chair

Texas State Board of Social Worker Examiners

Earliest possible date of adoption: June 19, 2005

For further information, please call: (512) 458-7236

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TITLE 34. PUBLIC FINANCE

**PART 5. TEXAS COUNTY AND
DISTRICT RETIREMENT SYSTEM**

**CHAPTER 101. PRACTICE AND PROCEDURE
REGARDING CLAIMS**

34 TAC §101.2

The Texas County and District Retirement System proposes an amendment to §101.2, concerning the scope and application of the rules adopted under Part 5 of Title 34, Administrative Code. This amendment states the equitable authority granted by the board to the director to suspend, modify, or grant an exception to the operation of a rule in an individual case in the interest of fairness and equity, and limits the application of the director's decision to that case only. The authority may not be used to enlarge or diminish any substantive rights or powers, and may not be exercised in a manner that would cause harm or injury to the

system or any other party, or that would be impermissible for a qualified plan under §401(a) of the Internal Revenue Code. This rule as amended is necessary to clearly specify the director's authority to grant equitable relief from the application of a rule in appropriate cases to avoid undue hardships, and the limits and effects of the exercise of that authority.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be the availability of equitable relief from the harshness of a rule when appropriate in individual cases. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amended rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The rule is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

No section of the Government Code is affected by this proposed rule.

§101.2. Scope and Application.

(a) These rules shall govern the procedure for the institution, conduct, and determination of all claims arising under the Act, and the administration of such other matters as are set forth under this Part 5 of Title 34, Administrative Code. They shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the system or the substantive rights of any person.

(b) Subject to the limitation described in subsection (a), the director is authorized to suspend, modify or grant an exception to the operation of a rule under this Part 5 of Title 34 in individual cases as equity and fairness require to avoid undue hardship, where to do so will not prejudice the system or cause delay or inconvenience in its management or administration, or cause harm or injury to another party, or cause an impermissible suspension, modification, or exception to a mandatory qualification requirement under §401(a) of the Internal Revenue Code of 1986.

(c) The decision to suspend, modify or grant an exception to the operation of a rule in an individual case is within the sole and exclusive discretion of the director. A determination by the director to grant or deny relief is final and not appealable by any person. A determination by the director to grant relief to any person does not create a right or privilege in any other person to an exception, suspension or modification to a rule, or excuse a failure to comply with a rule in all of its particulars.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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TRD-200501848

Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Earliest possible date of adoption: June 19, 2005
For further information, please call: (512) 637-3230



CHAPTER 103. CALCULATIONS OR TYPES OF BENEFITS

34 TAC §103.2

The Texas County and District Retirement System proposes an amendment to §103.2, concerning the optional benefit forms that may be selected by the participant. The proposed amendment includes the optional 100% joint and survivor annuity with a 'pop-up' feature that increases the monthly annuity amount to the standard benefit if the designated beneficiary predeceases the retiree. The 25% joint and survivor benefit option has been replaced by the new option. The proposed amendment also references the statutory section which sets forth the order of distribution of unrecovered contributions in the event the retirement annuity terminates before all individual contributions have been recovered. This rule as amended will appropriately reflect the statutory changes made to the available optional benefit forms and the order of distribution of unrecovered contributions.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be accurate information available to the membership regarding an optional benefit form that is of greater value and utility to a segment of the retiring membership than an option that heretofore has been rarely selected. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amended rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

No sections of the Government Code are affected by this proposed amendment.

§103.2. Additional Optional Benefits.

(a) A member entitled to retirement may elect to receive, in lieu of a standard ~~[service or disability]~~ retirement benefit, one of the following optional benefits, each of which is a reduced monthly annuity ~~[allowance]~~ that is the actuarial equivalent of the standard retirement benefit, payable during the lifetime of the retiree, but with the provision that:

(1) Option 1: after the retiree's death, the reduced annuity is payable throughout the life of a person designated by the retiree;

(2) Option 2: after the retiree's death, one-half of the reduced annuity is payable throughout the life of a person designated by the retiree;

(3) Option 3: if the retiree dies before 60 monthly annuity payments have been made, the remainder of the 60 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate;

(4) Option 4[A]: if the retiree dies before 120 monthly annuity payments have been made, the remainder of the 120 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate;

(5) Option 5 [4B]: after the retiree's death, ~~[one-fourth of]~~ the reduced annuity is payable throughout the life of a person designated by the retiree, except that if the designated person predeceases the retiree, the annuity payable throughout the remaining life of the retiree is the annuity that would be payable if the retiree had chosen a standard retirement annuity;

(6) Option 6 [4C]: after the retiree's death, three-fourths of the reduced annuity is payable throughout the life of a person designated by the retiree;

(7) Option 7 [4D]: if the retiree dies before 180 monthly annuity payments have been made, the remainder of the 180 payments are payable to the retiree's beneficiary or, if one does not exist, to the retiree's estate.

(b) If ~~[monthly]~~ payments under a standard or ~~[an]~~ optional retirement ~~benefit~~[annuity described in subsection (a) of this section] cease before the sum of all such ~~[the monthly]~~ payments equals or exceeds the amount of accumulated contributions in the individual account in the employees ~~[employee]~~ saving fund at the time of retirement of the member on whose service the annuity was based, a lump-sum benefit equal to the amount by which the accumulated contributions exceed the sum of all such ~~[monthly]~~ payments made under the annuity is payable in the manner described in Government Code §844.402.~~[-]~~

~~{(1) to the designated beneficiary, if living, or if not living, to the estate of the designated beneficiary, if the designated beneficiary survived the retiree; or}~~

~~{(2) to the estate of the retiree, if the designated beneficiary predeceased the retiree.}~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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34 TAC §103.6

The Texas County and District Retirement System proposes an amendment to §103.6, concerning the inclusion in the retirement benefit calculation of those deposits received after the effective retirement date. The proposed amendment establishes a 60-day period in which post-retirement deposits must be received by the

system so that they may be included in the calculation of the benefit. A 60-day window is a reasonable period for an employer to determine and submit employee contributions attributable to the retiree's final regular pay period and payments for unused vacation and sick leave. Recalculations of annuities resulting from deposits received later than 60 days after the effective retirement date are disruptive to the efficient administrative operation of the system. Recalculations may still be made for additional deposits received after the 60-day window as a result of the correction of a reporting error. This rule as amended supports the efficient administration of the system by encouraging employers to be diligent in timely delivering to the system all required contributions and information.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be improved efficiency of the system in performing its administrative responsibility to accurately and timely determine the benefit payable to a retiring member and put that benefit in pay status. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amended rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

No sections of the Government Code are affected by this proposed amendment.

§103.6. Recalculation of Retirement Annuities to Include Post-Retirement Deposits.

(a) If a contribution that would otherwise be credited to the member's individual account in the system [System] is deposited after the member's effective retirement date, the retirement annuity shall be recalculated in accordance with this section.

(b) The following deposits shall be treated as additional accumulated contributions for purposes of recalculating the retirement annuity:

(1) employee contributions attributable to compensation for services performed while a member of the system [System] but deposited within 60 days after the effective retirement date of the member;

(2) employee contributions attributable to compensation for services performed while a member of the system [System] but deposited within 60 days after the death [effective retirement date] of a deceased member; and,

(3) employee contributions deposited as a result of a correction of a reporting error made in accordance with the Government Code, §842.112.

(c) A retirement annuity subject to this section will be recalculated as of the effective retirement date by taking into account the additional accumulated contributions and the related increases in current service credit and matching credit. The recalculated retirement annuity will be based on the age of the retiree (and the age of the beneficiary in the case of a joint and survivor option) as of the effective retirement date.

(d) The recalculated retirement annuity is payable only prospectively beginning with the month following the month in which the retirement system receives the deposit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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34 TAC §103.7

The Texas County and District Retirement System proposes an amendment to §103.7, concerning the restoration of service credits pursuant to a subdivision's order under Government Code §843.003. An order under that section authorizes a member to reinstate service credits forfeited because of a withdrawal of the member's account by paying to the system the amount withdrawn and a 5% per annum withdrawal charge. The payment of the amount withdrawn is deposited to the member's individual account for the crediting of interest in accordance with the TCDRS Act. An eligible member under this section is a member who is an employee of the subdivision on January 1st, the effective date of the order. An eligible member may pay the required amount at any time on or after that date. To be credited with interest for the year under the TCDRS Act, the payment must be included in the member's opening account balance on January 1 of that year. The proposed amendment requires the member to make the payment on or before December 15, for crediting to the member's account on the following January 1. A member has sufficient time (eleven and one-half months) during the year to submit the payment so that it will be included in the following January 1 opening account balance for the crediting of interest. If the payment is received by the system after December 15, the deposit will not be treated as accumulated contributions for the crediting of interest at year's end until the next following January 1. The mid-December cutoff for crediting the payment is necessary because of the heavy volume of end-of-year processing for refunds, retirements and subdivision change orders. This rule as amended is necessary for the efficient operation of the systems.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be improved efficiency of

the system in performing its administrative responsibility to timely and promptly pay refunds and retirements. There will be no costs to small businesses. There are no anticipated material economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amended rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

Government Code, §843.003 is affected by this proposed amendment.

§103.7. Determination of Reestablished Credit.

(a) Except as provided in subsection (b) of this section, for purposes of determining the current service credit and multiple matching credit of the member under Texas Government Code, §843.403, the amount deposited by the member (excluding the withdrawal charge and the amounts described in subsection (b) of this section) after December 31, 1998, to reestablish credit in the retirement system shall be considered to be accumulated contributions made by the member to the retirement system during the calendar year of deposit. The percentage to be used for the determination of the multiple matching credit of the member with respect to such deposit is that percentage adopted by the governing board of the authorizing subdivision and in effect during the month in which the deposit is made. The multiple matching credit percentage may be increased by the governing board on the terms provided by the Government Code, Chapter 844, Subchapter H.

(b) The portion of the member's deposit that is a repayment of the amount transferred from a local pension system to the member's individual account in this retirement system pursuant to a merger under Texas Government Code, § 842.006 and the accumulated interest attributable to such transferred amount shall not be considered when determining the current service credit and multiple matching credit of the member under subsection (a) of this section unless the merger agreement provides otherwise.

(c) For purposes of determining the interest to be credited to the member's individual account, a deposit made under this section that is received by the system on or before December 15, will be included in the member's account as accumulated contributions on the following January 1. A deposit received after December 15 will not be included as accumulated contributions in the determination of the interest to be credited to the member's individual account until January 1 of the next following year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

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Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

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CHAPTER 107. MISCELLANEOUS RULES

34 TAC §107.2

The Texas County and District Retirement System proposes new rule §107.2, concerning the payment by members to purchase forfeited service credits in accordance with Government Code §843.0031. This section of the code authorizes a current member who has forfeited benefits by previously withdrawing the member's individual account to pay to the system for deposit to the member's account, a lump-sum in any amount that does not exceed the actuarial present value of the benefits that would be attributable to the withdrawn amount. The payment, which can be made at any time during employment, will be deposited to the member's individual account as accumulated contributions for crediting with interest in accordance with the TCDRS Act. However, the payment and all accumulated interest relative to the payment are excluded from the determination of the member's current service credit and multiple matching credits. To be credited with interest under the TCDRS Act for a specific year, the payment must be included in the member's opening account balance on January 1 of that year. The proposed new rule requires the member to make the payment on or before December 15, for crediting to the member's account on the following January 1. If the payment is received by the system after December 15, the deposit will not be treated as accumulated contributions for the crediting of interest until the next following January 1. The mid-December cutoff for crediting the payment is necessary because of the heavy volume of end-of-year processing for refunds, retirements and subdivision change orders. This new rule is necessary for the efficient operation of the systems.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be improved efficiency of the system in performing its administrative responsibility to timely and promptly pay refunds and retirements. There will be no costs to small businesses. There are no anticipated material economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed new rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The new rule is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

Government Code, §843.0031 is affected by this proposed new rule.

§107.2. Payments by Members to Purchase Forfeited Benefits.

(a) Pursuant to Government Code, §843.0031, a member who has withdrawn accumulated contributions from the system and is a member with another participating subdivision or again becomes a contributing member with any participating subdivision may at any time

before retirement pay to the system for deposit to the member's individual account a lump-sum in any amount that does not exceed the actuarial present value of the additional benefits that would have been attributable to the withdrawn contributions.

(b) An amount paid under subsection (a) of this section will be deposited to the member's individual account as accumulated contributions and credited with interest as allowed by Government Code, Title 8, Subtitle F.

(c) The amount paid under subsection (a) of this section together with all accumulated interest attributable to that amount is not subject to employer matching and will be excluded from the determination of the member's current service credit and multiple matching credits.

(d) For purposes of determining the interest to be credited to the amount paid under subsection (a) of this section, a payment that is received by the system on or before December 15, will be included in the member's account as accumulated contributions on the following January 1. A payment received after December 15 will not be included as accumulated contributions in the determination of the interest to be credited to the member's individual account until January 1 of the next following year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2005.

TRD-200501852

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Earliest possible date of adoption: June 19, 2005

For further information, please call: (512) 637-3230



34 TAC §107.5

The Texas County and District Retirement System proposes an amendment to §107.5, concerning the termination of membership resulting from the withdrawal of all accumulated contributions by a member, and the cancellation of a withdrawal application and reinstatement of accounts. The proposed amendment clarifies that the date of membership termination and closing of accounts is the date shown on the first check the system sends or causes to be sent as payment of any portion of the member's accumulated contributions. In the ordinary course of the distribution process, withdrawal checks are routinely mailed no later than the next business day after production, and represent the entire account balance of the member as shown in system records. However, delayed deposits by the employer may require the issuance of a supplemental check in the amount of these late deposits. Additionally, the date shown on the first check marks the beginning of the 60-day period in which the member may return all checks thereby canceling the withdrawal application and reinstating the account or accounts. The member must return the check or checks issued by the system rather than remit a reimbursement of the amount received. The rule as amended supports the efficient administration of the system in instances where two or more checks are issued pursuant to a withdrawal application by defining a single date for purposes of termination of membership and closing of accounts. Additionally, exceptions and special processing are avoided by limiting the opportunity

for reinstatement to the timely return of the actual checks rather than reimbursement of the amount paid.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be improved efficiency of the system in establishing a clear and identifiable date for the termination of accounts while allowing relief to members who timely act to rescind their previous actions. There will be no costs to small businesses. There are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amended rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

Government Code, §842.108 is affected by this proposed amendment.

§107.5. ~~[Date of]~~ Termination of Membership on Withdrawal; Cancellation of Withdrawal Application ~~[Payment of Refund; Cancellation of Refund]~~.

(a) If a member files an application to withdraw ~~[The date on which the retirement system mails, or electronically transfers payment of]~~ all accumulated contributions credited to a member's individual accounts in the employees saving fund pursuant to §842.108(b), Government Code, the date shown on the first check the system sends or causes to be sent as payment of any portion of the member's accumulated contributions is the date on which the person's membership in the ~~[retirement]~~ system terminates under §842.109 of that code as a result of that payment.

(b) If a person files an application for withdrawal of accumulated contributions, the accounts that are the subject of the application will be closed as of the date shown on the first check which the system sends or causes to be sent as payment of any portion of the accumulated contributions. ~~[If the retirement system receives the amount withdrawn from a person's account within 60 days after the date the refund was mailed or electronically transferred, together with the person's written request to be reinstated as a member, if the refund terminated membership, the person's account shall be reopened as if the payment to the member had not been made.]~~

(c) An application for withdrawal of accumulated contributions may be cancelled and the accounts that were the subject of the application reinstated retroactive to the date of closure provided no check issued by or on behalf of the system with respect to the application has been cashed or deposited and all such checks are returned to the system within 60 days of the date shown on the first check sent as payment of any portion of the accumulated contributions.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2005.

TRD-200501853
Tom Harrison
Deputy Director and General Counsel
Texas County and District Retirement System
Earliest possible date of adoption: June 19, 2005
For further information, please call: (512) 637-3230



CHAPTER 109. DOMESTIC RELATIONS ORDERS

34 TAC §109.12

The Texas County and District Retirement System proposes an amendment to §109.12, concerning the payments to spouses and former spouses as alternate payees under a qualified domestic relations order. The amendment describes the manner of payment of the interest awarded to the alternate payee in those cases where the qualified domestic relations order is received after the participant or participant's beneficiary has begun to receive a dual-life retirement annuity and the alternate payee was not the beneficiary-annuitant. Additionally, the amendment describes the authority to initiate payment of the interest awarded to the alternate payee in cases where the underlying membership has terminated and the person entitled to apply for the former member's benefit fails to do so. Lastly, the amendment defines and expands the authority and circumstances under which the system may pay the alternate payee the lump sum actuarial equivalent of the interest awarded to the alternate payee that would otherwise be payable in the form of a single life annuity. As non-substantive modifications, the amendment also makes minor clarifying changes to the grammar and style of the rule.

Tom Harrison, Deputy Director and General Counsel of the Texas County and District Retirement System, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Harrison has also determined that for each year of the first five years the rule is in effect the public benefit anticipated as a result of administering the rule will be improved efficiency of the system in making payments under terminated memberships, making a single payment of certain benefits in the form of lump sums thereby eliminating the costs associated with the on-going administration of life annuities of small monthly amounts, and making available to the divorcing parties distribution options that are more flexible and appropriate to individual circumstances. There will be no costs to small businesses. Because the benefit forms are actuarially equivalent and may enjoy similar tax advantages there are no anticipated economic costs to persons who are required to comply with the rule as proposed.

Comments on the proposed amended rule may be submitted to Tom Harrison, Deputy Director and General Counsel, Texas County and District Retirement System, P.O. Box 2034, Austin, TX 78768-2034.

The amendment is proposed under the Government Code, §845.102, which provides the board of trustees of the Texas County and District Retirement System with the authority to adopt rules necessary or desirable for efficient administration of the system.

Government Code, §844.006 is affected by this proposed amendment.

§109.12. Payments to Alternate Payees.

(a) In the event that an eligible ~~[the]~~ participant or surviving beneficiary of an eligible participant [terminates membership in the system and] applies for a withdrawal [refund] of the participant's accumulated contributions after the date that a domestic relations order is received by the system [deposits and interest], the system will make a lump-sum payment to the alternate payee if the domestic relations order so provides and the order has been determined to be a qualified domestic relations order.

(b) In the event that the participant ~~[or the participant's [designated] beneficiary [or estate]]~~ begins receiving an annuity after the date that a qualified domestic relations order is received by the system, and the order provides for a division of the annuity in that event, the benefit payable [payment] to the alternate payee will be an annuity [a monthly allowance] payable monthly during the lifetime of the alternate payee, which annuity [payment] is the actuarial equivalent of the portion of the participant's benefit that was awarded to the alternate payee under the domestic relations order. ~~[The mortality assumption for the alternate payees for determining the payment to the alternate payee shall be the same as the mortality assumption for the beneficiaries as set forth in §103.1(a) of this title (relating to Actuarial Tables) with regard to service retirements and as set forth in §103.1(b) of this title (relating to Actuarial Tables) with regard to disability retirements.]~~

(c) Subsection (b) of this section will apply to all domestic relations orders approved in accordance with this chapter after January 1, 1990, and to such domestic relations orders approved prior to that date as are construed to provide for such an annuity.

(d) If a qualified domestic relations order is received by the system after the participant begins receiving a retirement annuity under which the alternate payee is not the designated beneficiary-annuitant, the benefit awarded to the alternate payee may be paid as a portion of each payment if, as, and when a payment is made under the retirement benefit to the retiree or the retiree's beneficiary. Payments to the alternate payee cease at the earliest of: [In the event that the total reserves upon which an annuity (otherwise payable to an alternate payee under a qualified domestic relations order) would be calculated are \$5,000 or less, then the system is authorized to make a single lump-sum payment to the alternate payee in the amount of those reserves instead of paying an annuity to the alternate payee. No such payment shall be made by the system until such point in time as the system begins paying an annuity to the participant or the participant's designated beneficiary, surviving spouse, or estate.]

(1) The month in which the alternate payee dies;

(2) The month in which the final payment under the retirement benefit is made to the retiree or the retiree's beneficiary; or

(3) The month in which the alternate payee has cumulatively received all amounts awarded under the qualified domestic relations order.

(e) If a person's membership in the system has terminated, and under the terms of a qualified domestic relations order, an alternate payee would be entitled to receive a portion of the benefit that would be payable to the former member, or the former member's beneficiary, and if a valid application for the benefit has not been filed with the system within 60 days from the date the system mails notice of membership termination in accordance with Government Code, §845.505 so that payment can be made to the alternate payee, the director may commence payment of the benefit that would be payable to the alternate payee if the person entitled to apply for the former member's benefit had filed an application for a retirement annuity. If the person entitled to apply for the former member's benefit would be entitled to only the accumulated contributions of the former member, the alternate payee

will receive the amount that would be payable to the alternate payee if the person had filed an application for withdrawal of accumulated contributions.

(f) In accordance with Government Code, §804.004, and in lieu of a life annuity described in §844.006(d) of that code or in subsection (b) or subsection (e) of this section that would otherwise be payable to an alternate payee under a qualified domestic relations order, the system is authorized, but not required, to make a single lump-sum payment to the alternate payee in an amount that is the actuarial equivalent of such life annuity if:

(1) The actuarially equivalent amount is \$10,000 or less;

(2) The actuarially equivalent amount is \$15,000 or less and the alternate payee has consented to the distribution in the form of a single lump-sum payment; or

(3) At the time the monthly annuity payments would commence, the alternate payee has directed that payment of the monthly annuity is to be delivered outside of the United States and any possession of the United States. The determination of whether to pay an amount authorized by this subsection in lieu of the interest awarded by the qualified domestic relations order is at the sole discretion of the system.

(g) The mortality assumption for alternate payees for determining the actuarial equivalent of a benefit payable to an alternate payee shall be the same as the mortality assumption for beneficiaries as set forth in §103.1(a) of this title (relating to Actuarial Tables) with regard to service retirements.

(h) Except as provided in subsection (e) of this section, no payment shall be made by the system to an alternate payee before the time that the participant or the participant's beneficiary files a valid application for a refund or a retirement annuity.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 9, 2005.

TRD-200501854

Tom Harrison

Deputy Director and General Counsel

Texas County and District Retirement System

Earliest possible date of adoption: June 19, 2005

For further information, please call: (512) 637-3230



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 9. PUBLIC SAFETY COMMUNICATIONS

SUBCHAPTER C. AMBER ALERT NETWORK FOR ABDUCTED CHILDREN

37 TAC §§9.21 - 9.24

The Texas Department of Public Safety (DPS) proposes new Subchapter C, §§9.21 - 9.24, relating to the Amber Alert Network for Abducted Children. The new sections are necessary to promulgate the policies and procedures of DPS governing the statewide coordination of the Amber Alert Network activation and deactivation in order to maintain a high level of effectiveness.

In the new subchapter, §9.21 details the need for statewide coordination of the Amber Alert Network in order to maintain a high level of effectiveness; §9.22 describes local law enforcement responsibility; §9.23 describes the department's responsibility; and §9.24 describes the activation and deactivation.

The new sections are necessary to fully implement Tex. S.B. 57, Acts 2003, 78th Leg., R.S., ch.789, §1.

Oscar Ybarra, Chief of Finance, has determined that for each year of the first-five year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Mr. Ybarra also has determined that for each year of the first five-year period the rules are in effect the public benefit anticipated as a result of enforcing the rules will be to ensure the high level of effectiveness of the statewide emergency response system for abducted children. There is no anticipated adverse economic effect on individuals, small businesses, or micro-businesses.

Comments on the proposal may be submitted to Mike Gougler, Special Crimes Service, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0420, (512) 424-5028.

The new sections are adopted pursuant to Texas Government Code, §411.353(b), which requires the director to adopt rules and issue directives as necessary to ensure proper implementation of the alert system with the rules and directive to include instructions on the procedures for activating and deactivating the alert system; and Texas Government Code, §411.353(c), which requires the director to prescribe forms for use by local law enforcement agencies in requesting activation of the alert system.

Texas Government Code, §411.353 is affected by this proposal.

§9.21. Statewide Coordination of Amber Alert Network.

The Amber Alert Network was developed as a statewide emergency response system for abducted children. The network is designed to be activated in instances involving true child abductions. Activation of the network outside the established criteria will ultimately cause the public to disregard the notifications and the system will lose effectiveness. In order to maintain a high level of effectiveness, the department and local law enforcement must ensure that the circumstances justifying activation are accurately evaluated in order to implement the network in a responsible manner. Amber Alert activations must be limited to those instances where the statutory criteria for activation are clearly established by the specific facts of the case.

§9.22. Local Law Enforcement Responsibility.

A local law enforcement agency with jurisdiction over the investigation of an abducted child may submit a request for activation of the Amber Alert Network. The request must be submitted on DPS Form DEM-35. A local law enforcement agency may submit the form after it has verified that all statutory criteria for activation are clearly established by the specific facts of the case.
Figure: 37 TAC §9.22

§9.23. Department Responsibility.

The department shall review a request for activation to confirm that the request meets the statutory criteria for activation. The department will

not activate the network until the local law enforcement agency has clearly established that all statutory criteria for activation are satisfied.

§9.24. Activation and Deactivation.

Amber Alert Network activations and deactivations will be made according to the procedures specified in the current Statewide Texas Amber Alert Network Plan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501809

Thomas A. Davis, Jr.

Director

Texas Department of Public Safety

Earliest possible date of adoption: June 19, 2005

For further information, please call: (512) 424-2135

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 1. CONSUMER CREDIT REGULATION

SUBCHAPTER T. MOTOR VEHICLE SALES FINANCE OPERATIONS

7 TAC §1.1503

Pursuant to Texas Government Code, §2001.027 and 1 TAC §91.38(d), the proposed new section, submitted by the Finance Commission of Texas has been automatically withdrawn. The new section as proposed appeared in the November 5, 2004 issue of the *Texas Register* (29 TexReg 10183).

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501814



TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 34. STATE FIRE MARSHAL

SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §34.831

The Texas Department of Insurance withdraws the proposed amendments to §34.831 which appeared in the December 3, 2004, issue of the *Texas Register* (29 TexReg 11256).

Filed with the Office of the Secretary of State on May 9, 2005.

TRD-200501856

Gene C. Jarmon

General Counsel and Chief Clerk

Texas Department of Insurance

Effective date: May 9, 2005

For further information, please call: (512) 463-6327



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 425. FIRE INSTRUCTORS

SUBCHAPTER A. FIRE SERVICE INSTRUCTOR CERTIFICATION

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9

The Texas Commission on Fire Protection withdraws the proposed repeals to §§425.1, 425.3, 425.5, 425.7, and 425.9 which appeared in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1605).

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501820

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: May 6, 2005

For further information, please call: (512) 239-4921



SUBCHAPTER B. FIRE EDUCATION SPECIALIST CERTIFICATION

37 TAC §§425.201, 425.203, 425.205, 425.207, 425.209

The Texas Commission on Fire Protection withdraws the proposed repeals to §§425.201, 425.203, 425.205, 425.207, 425.209 which appeared in the March 18, 2005, issue of the *Texas Register* (29 TexReg 1606).

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501821

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: May 6, 2005

For further information, please call: (512) 239-4921



SUBCHAPTER C. ASSOCIATE INSTRUCTOR CERTIFICATION

37 TAC §425.301

The Texas Commission on Fire Protection withdraws the proposed repeal to §425.301 which appeared in the March 18, 2005, issue of the *Texas Register* (29 TexReg 1607).

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501822

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: May 6, 2005

For further information, please call: (512) 239-4921

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SUBCHAPTER D. INSTRUCTOR TRAINING COURSES

37 TAC §425.401

The Texas Commission on Fire Protection withdraws the proposed repeal to §425.401 which appeared in the March 18, 2005, issue of the *Texas Register* (29 TexReg 1607).

Filed with the Office of the Secretary of State on May 6, 2005, 2005.

TRD-200501823

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: May 6, 2005

For further information, please call: (512) 239-4921

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CHAPTER 425. FIRE SERVICE INSTRUCTORS

37 TAC §§425.1, 425.3, 425.5, 425.7, 425.9, 425.11, 425.12

The Texas Commission on Fire Protection withdraws the proposed new §§425.1, 425.3, 425.5, 425.7, 425.9, 425.11, and 425.12 which appeared in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1607).

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501824

Gary L. Warren, Sr.

Executive Director

Texas Commission on Fire Protection

Effective date: May 6, 2005

For further information, please call: (512) 239-4921

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ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text as published in the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 22. EXAMINING BOARDS

PART 5. STATE BOARD OF DENTAL EXAMINERS

CHAPTER 102. FEES

The Texas State Board of Dental Examiners (Board) adopts the repeal of 22 TAC Chapter 102, §102.1, concerning fees charged by the Board, and adopts new §102.1 to replace it without changes to the proposal as published in the January 14, 2005, issue of the *Texas Register* (30 TexReg 69).

The new section contains language to enact certain fee requirements imposed by Senate Bills 1152 and 263, §10 and §19, 78th Legislature. The new section, compared to the previous iteration, also contains extensive revisions to clarify and standardize language, and to improve organization.

Section 102.1(a)(4)(A) reflects the addition of the statutorily required \$5 online fee for dental licensees, changing the annual dental registration renewal fee from \$111 to \$116.

Section 102.1(b)(4)(A) reflects the addition of the statutorily required \$3 online fee for dental hygiene licensees, changing the annual dental hygiene registration renewal fee from \$66 to \$69.

Section 102.1(c)(1) reflects the addition of fees for the new dental assistant registration program, in the amount of \$50 for the initial registration, and \$25 for the annual renewal.

Section 102.1(c)(2) reflects a reduction in the fees for a pit and fissure sealant certification, in order to help offset the cost to dental assistants who wish to hold both a dental assistant registration and a pit and fissure sealant certification. The initial registration fee has been reduced from \$50 to \$25, and the annual renewal fee has been reduced from \$50 to \$15.

Section 102.1(d)(2)(B) reflects the addition of the statutorily required annual \$3.00 "e-pay" service fee for dental licensees.

There are no other substantive changes to the section.

No comments were received regarding either the adoption of the repeal or the new section.

22 TAC §102.1

The repeal of §102.1 is adopted under Texas Government Code §§2001.021, et seq; Texas Civil Statutes, Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501841

Fread Houston

General Counsel

State Board of Dental Examiners

Effective date: May 26, 2005

Proposal publication date: January 14, 2005

For further information, please call: (512) 475-0987



22 TAC §102.1

The section is adopted under Texas Government Code §§2001.021, et seq., Texas Civil Statutes, Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501840

Fread Houston

General Counsel

State Board of Dental Examiners

Effective date: May 26, 2005

Proposal publication date: January 14, 2005

For further information, please call: (512) 475-0987



CHAPTER 107. DENTAL BOARD PROCEDURES

SUBCHAPTER B. PROCEDURES FOR INVESTIGATING COMPLAINTS

22 TAC §107.102

The Texas State Board of Dental Examiners (Board) adopts amendments to 22 TAC Chapter 107, §107.102, concerning procedures for investigating complaints, with changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1394). The amendments are to clarify and standardize language, and to improve organization.

The adopted amendments remove from §107.102 subsections (g) - (j). The language contained in those subsections addressed dismissal of cases, and have been relocated to a new §107.103. The Board is concurrently adopting new §107.103, the repeal of the current §107.103, and a new §107.110 to contain the language that previously resided in §107.103.

The adopted amendments also more accurately reflect that the director of enforcement may only recommend, and not dictate, the manner of disposition of complaints.

The section as adopted differs from the section as initially proposed only in that the title has been changed from "Procedures in Conduct of Investigation" to "Procedures for Investigating Complaints."

There are no other substantive changes to the section.

No comments were received regarding adoption of the amendment.

The amendments are adopted under Texas Government Code §§2001.021, et seq., Texas Civil Statutes; Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

§107.102. Procedures for Investigating Complaints.

(a) An investigative file accounting for each complaint filed with the SBDE shall be maintained under the supervision of the director of enforcement.

(b) Every complaint shall be reviewed by the director of enforcement to determine jurisdiction. If jurisdiction exists, a complaint shall be investigated to determine the facts concerning the complaint. All investigators shall be state employees.

(c) If, upon review, the investigation reveals an imminent threat to a person's welfare, the case shall be referred to the executive director, who shall determine whether or not to refer the case to the chairperson of the executive committee of the board for consideration of temporary suspension, pursuant to the Occupations Code, Chapter 263, §263.004.

(d) During the course of an investigation, the complainant shall be given an opportunity to explain or comment on the allegations made in the complaint. At the initiation of the investigation, the respondent shall be provided a copy of the complaint to facilitate a response, unless doing so would jeopardize an investigation.

(e) The parties to the complaint shall receive notice of the complaint's status, at least quarterly, until final disposition of the complaint, unless such notice would jeopardize an investigation.

(f) Upon completion of the investigation, the director of enforcement shall review the case. The director of enforcement may:

- (1) recommend dismissal of the complaint;
- (2) recommend the case be taken before the State Office of Administrative Hearings;
- (3) recommend the case be taken before an informal settlement conference;
- (4) recommend that the legal division prepare a proposed board order;
- (5) refer the case for review by the board or a committee of the board;
- (6) direct further investigation;
- (7) refer the case for review by a board member; or,
- (8) take other appropriate action or consideration in accordance with SBDE rules and the Dental Practice Act.

(g) The director of enforcement will not make a recommendation in cases involving standard of care issues. Such cases shall be reviewed by one board member, who must be a dentist.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501816

Fread Houston

General Counsel

State Board of Dental Examiners

Effective date: May 26, 2005

Proposal publication date: March 11, 2005

For further information, please call: (512) 475-0987



22 TAC §107.103

The Texas State Board of Dental Examiners (Board) adopts the repeal of 22 TAC Chapter 107, §107.103, concerning compliance, without changes to the proposal as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 800).

The repeal allows for a new §107.103, regarding dismissal of complaints. The Board is concurrently adopting a new §107.110 to contain the language previously residing in §107.103. This restructuring will provide for better structure and flow in the chapter.

No comments were received regarding adoption of the repeal.

The repeal is adopted under Texas Government Code §§2001.021, et seq., Texas Civil Statutes; Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501817

Fread Houston

General Counsel

State Board of Dental Examiners

Effective date: May 26, 2005

Proposal publication date: February 18, 2005

For further information, please call: (512) 475-0987



22 TAC §107.103

The Texas State Board of Dental Examiners (Board) adopts new 22 TAC Chapter 107, §107.103, concerning dismissal of complaints, with changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 800).

The new section relocates language regarding dismissal that was previously contained in §107.102, as well as to enact certain requirements imposed by Senate Bill 263, §12, 78th Legislature, that amended Texas Occupations Code §255.006.

Texas Occupations Code §255.006(d)(7) requires that the Board establish procedures for the expunction of dismissed complaints. Section 107.103(d) as adopted describes such a procedure.

The Board is concurrently adopting amendments to §107.102, the repeal of the current §107.103, and a new §107.110 to contain the language previously residing in §107.103.

The section as adopted differs from the section as initially proposed only in that the title has been changed from "Dismissal of Cases" to "Dismissal of Complaints," to be more consistent with the language of this and neighboring sections.

No comments were received regarding adoption of the new section.

The section is adopted under Texas Government Code §§2001.021, et seq., Texas Civil Statutes; Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

§107.103. Dismissal of Complaints.

(a) Dismissal.

(1) The director of enforcement may recommend dismissal of a complaint if an investigation fails to reveal a violation.

(2) If the director of enforcement recommends dismissal of a complaint, he or she shall state, with specificity, the reason or reasons for the recommended dismissal.

(3) A complaint recommended for dismissal by the director of enforcement shall be reviewed by a member of the enforcement committee. For complaints involving patient morbidity, professional conduct, or minimum standard of care, the reviewer must be a dentist member of the committee.

(4) If the committee member does not recommend dismissal, the complaint shall be forwarded to an informal settlement conference. If the committee member agrees that the complaint should be dismissed, then the dismissal shall be final.

(5) All jurisdictional complaints shall be investigated. No complaint shall be dismissed without appropriate consideration.

(6) If a complaint is dismissed, the SBDE shall notify the complainant within ten days of the date of the dismissal. The notice of dismissal must be in writing, include the reason(s) for the dismissal and inform the complainant of the right to appeal the dismissal. An appeal under this section shall be considered a request for reconsideration of the dismissed complaint.

(7) All complaints dismissed under this section must be reported to the full board in a public meeting of the board.

(b) Appeal.

(1) The SBDE may hear an appeal in a dismissed complaint only if new information or evidence is presented, the acceptance of such, if taken as true, supports the original complaint.

(2) The complainant must request reconsideration of a dismissed complaint in writing, postmarked no later than twenty days from the date of receipt of the SBDE's dismissal letter. The complainant is presumed and deemed to be in receipt of the dismissal letter on the third day after the date on which the dismissal letter is mailed.

(3) A request for reconsideration of a dismissed complaint shall not be considered by the SBDE unless it is timely submitted.

(4) A request for reconsideration must contain the requirements specified in this subsection.

(5) Requests meeting the requirements of this subsection shall be heard by the professional evaluation committee no later than sixty days after the date the SBDE receives the request from the complainant requesting reconsideration. This time frame may be extended upon good cause shown by the SBDE. If the professional evaluation committee meets to reconsider the complaint after this sixty-day period, the SBDE shall notify the complainant in writing.

(6) This subsection does not apply to complaints dismissed by the full board pursuant to a recommendation from an informal settlement conference panel.

(7) All complaints dismissed by the full board may be appealed in accordance with the Government Code.

(c) Professional evaluation committee.

(1) The professional evaluation committee shall consist of three board members appointed by the presiding officer of the board, one of whom must be a public member.

(2) Complaints referred to the professional evaluation committee by the board secretary or the board secretary's designee may be dismissed, referred to an informal settlement conference or returned to the director of enforcement for further investigation. The professional evaluation committee may also propose an agreed board order imposing sanctions. All board orders proposed by the professional evaluation committee shall include a statement that the respondent should not agree to the order if he or she wants to explain any part of his or her conduct in connection with the complaint.

(A) Meetings of the professional evaluation committee are open meetings as defined by the Open Meetings Act;

(B) Only professional evaluation committee members and SBDE staff may participate in discussions concerning any complaint. The members may review and consider all information in the investigative file.

(C) All determinations reached by the professional evaluation committee involving reconsideration of an earlier dismissal by the SBDE are final.

(d) Expunging dismissed complaints.

(1) The director of enforcement may, at his or her discretion, recommend that a complaint be expunged from SBDE records on written request from the respondent if:

(A) The complaint has been dismissed under this section;

(B) There has been no successful appeal;

(C) There is no pending appeal;

(D) At least 30 days has passed since the dismissal notice letter was sent to the complainant; and,

(E) The executive director has determined that the complaint was clearly groundless and completely without merit.

(2) A recommendation that a complaint be expunged shall be reviewed by a member of the enforcement committee. For complaints involving patient morbidity, professional conduct, or minimum standard of care, the reviewer must be a dentist member of the committee. The determination of this reviewer shall be final.

(3) The expunging of any complaint under this subsection must be reported to the full board at a public meeting of the board.

(4) This subsection does not apply to complaints dismissed by the full board pursuant to a recommendation from an informal settlement conference panel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501819

Fread Houston
General Counsel
State Board of Dental Examiners
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Proposal publication date: February 18, 2005
For further information, please call: (512) 475-0987



22 TAC §107.110

The Texas State Board of Dental Examiners (Board) adopt new 22 TAC Chapter 107, §107.110, concerning compliance, without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 802).

The new section relocates the language previously residing in §107.103, the repeal of which the Board is concurrently adopting. This restructuring provides for better structure and flow in the chapter.

The adopted text differs from the previous text in that it removes language that has proven extraneous and over-specific in its description of the computer database system to be employed for compliance purposes. The adopted language also eliminates the need for the director of enforcement to coordinate with the executive director and board secretary before initiating a complaint against a licensee for non-compliance with a board order.

All other changes to the relocated language are solely for clarity and grammatical purposes.

No comments were received regarding adoption of the section.

The section is adopted under Texas Government Code §§2001.021, et seq., Texas Civil Statutes; Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 116. DENTAL LABORATORIES

22 TAC §116.10

The Texas State Board of Dental Examiners (Board) adopts new §116.10, concerning prosthetic identification, without changes to the proposed text as published in the February 18, 2005, issue of the *Texas Register* (30 TexReg 802). The new section reinstates the language of previous §116.11, which was repealed effective May 10, 2004. The language was to be simultaneously moved to a new §116.10, but due to an oversight, the new section was not proposed.

The adopted section contains no substantive changes from the language of the previous §116.11, except that the requirement of

a full name in a suitable prosthetic marking has been changed to last name and first initial. The language also contains revisions to clarify and standardize language, and to improve organization.

No comments were received regarding adoption of the new section.

The section is adopted under Texas Government Code §§2001.021, et seq., Texas Civil Statutes; Texas Occupations Code §254.001, which provides the Board with the authority to adopt and enforce rules necessary for it to perform its duties.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 4. SCHOOL LAND BOARD

CHAPTER 155. LAND RESOURCES

SUBCHAPTER A. COASTAL PUBLIC LANDS

31 TAC §155.4, §155.15

The School Land Board (Board) adopts amendments to §155.4 relating to Permits and §155.15 relating to Fees without changes to the proposed text published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1422). The permits that are the subject of these amendments authorize continued use of previously unauthorized structures on coastal public lands in accordance with Texas Natural Resources Code §§33.119 - 33.131. The amendment to §155.4(h) delegates authority to the commissioner of the Texas General Land Office (Land Office) to approve a permit renewal request without Board approval if the request is consistent with the criteria as set forth in subsection (c) of §155.4, provided that the permit holder has not made or proposed modifications to the permitted structure(s) that constitute major repairs other than a modification that reduces the dimensions of the structure(s). In addition, the amendments to §155.4(o) establish procedures for competitive bids for issuance of permits for structures determined to be abandoned or for which the permit was terminated by the board for cause. The amendments to §155.15 establish filing fees and fees for bonus payments for permits awarded on the basis of such competitive bids.

The Board received comments from one commentor from Houston, Texas. The commentor stated that the cabin structures are unauthorized structures on coastal public lands that are in effect "squatting" on state land. The Board disagrees with the commentor. Through the enactment of the Coastal Public Lands Management Act of 1973 (Acts 1973, 63rd Leg., p. 413, ch. 185, §10) and later codified as Texas Natural Resources Code

§§33.119 - 33.131, the legislature specifically allowed the issuance of permits for the continued use of previously unauthorized structures on coastal public lands. Cabin structures that are the subject of permits issued by the Board are no longer "unauthorized."

The commentor also stated that the Board should not reissue permits for cabin structures because they are unsightly and often in disrepair. The Board disagrees with the commentor. While the Board acknowledges that, in some cases, cabin structures may become dilapidated or derelict, Board regulations and contract provisions require that all structures must be maintained in good repair and safe condition, and must be kept in a clean and sanitary condition acceptable to the state. Permit holders that violate these regulations are subject to termination of their cabin structure permit. Cabin structures are routinely inspected by personnel of the General Land Office to ensure compliance. Board regulations also prohibit the issuance of a permit for a dilapidated or derelict structure. A structure is considered "dilapidated" or "derelict" if it is decayed, deteriorated, structurally unsound, fallen into partial ruin, or has been abandoned either through neglect or misuse. Such derelict structures are the specific problem that the adopted amendments are intended to remedy. The adopted amendments allow the state to replace derelict structures with new structures that meet the Board's regulations.

The commentor also stated that the state will receive a minimal amount of money for abandoned structures that are fixed up. The Board disagrees with the commentor. The adopted amendments provide for a bid process to enhance the revenue from the program, including the payment of a bonus fee by a successful bidder. The Board anticipates establishing a minimum bonus fee of \$10,000 for the reissuance of permits for abandoned structures. The adopted amendments also streamline the renewal process to make the program more cost efficient. In addition, the board may condition the reissuance of permits under this program on the removal of derelict structures, thus benefiting the state by saving it the expense of paying for such removal costs.

The commentor stated that the policy of the state should be to work its way out of the cabin structures while observing the permits currently in place. The Board disagrees with the commentor. The legislature specifically authorized the Board to issue permits allowing use of such structures and has indicated its continued support of the structure cabin permit program through its appropriation of funding for the program. The cabin structure permits provide for recreational use and enjoyment of coastal public lands by the public. In addition, cabin structure permit holders assist in monitoring the condition and management of coastal public lands, and often provide valuable assistance in enforcement actions.

The justification for these amendments is based on the fact that the Land Office will be able to administer the permitted cabin structure program more efficiently by streamlining the approval process for routine renewal requests for cabin structure permits. The amendments will result in a reduction in the time required for approval of routine renewal requests for cabin structure permits. The competitive bid process for abandoned and terminated cabin structure permits also provide public benefits that justify adoption of the amendments. First, the process makes available to the public previously inactive permits in a fair and impartial manner. Secondly, it provides additional revenue for managing coastal public lands in the estimated amount of \$55,000 each year, increasing by approximately \$5,000 each year. Finally, it

provides a means and method for removal of derelict structures at no coast to the state.

The Board has reviewed the amendments for consistency with the CMP's goals and policies adopted as regulations of the Coastal Coordination Council (Council) at 31 TAC §501.24 (relating to Policies for Construction of Waterfront Facilities and Other Structures on Submerged Land). Since the requests for renewal of cabin structure permits as well as those permits awarded as a result of the competitive bid process must meet the same criteria as set forth in subsection (c) of §155.4 for Board approval, the Board has determined that the adopted amendments are consistent with applicable CMP goals and policies.

The amendments are adopted under the Texas Natural Resources Code, §§33.119 - 33.131, providing that the Board may issue permits authorizing limited continued use of previously unauthorized structures on coastal public land; and Texas Natural Resources Code, §33.064, providing that the Board may adopt procedural and substantive rules which it considers necessary to administer, implement and enforce Texas Natural Resources Code, Chapter 33.

Texas Natural Resources Code, §§33.119 - 33.131 are affected by the adopted amendments.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2005.

TRD-200501813

Larry L. Laine

Chief Clerk

School Land Board

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For further information, please call: (512) 305-8598

TITLE 34. PUBLIC FINANCE

PART 4. EMPLOYEES RETIREMENT SYSTEM OF TEXAS

CHAPTER 75. HAZARDOUS PROFESSION DEATH BENEFITS

34 TAC §75.1

The Employees Retirement System of Texas ("ERS") adopts an amendment to 34 Texas Administrative Code §75.1, concerning Hazardous Profession Death Benefits, without changes to the proposed text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1568), and the rule will not be republished.

Section 75.1 is adopted to require a certified copy of an autopsy report only at the request of the System. This amendment is made based on a review of Chapter 615 application processes by ERS' internal auditor. The review revealed that the voluminous autopsy reports are not always needed to process an application for benefits.

ERS received no comments regarding the proposed amendment.

This amendment is adopted in accordance with Texas Government Code, §615.002, which provides authorization for the ERS Board of Trustees to adopt rules necessary to administer Chapter 615.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 9, 2005.

TRD-200501855

Paula A. Jones

General Counsel

Employees Retirement System of Texas

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For further information, please call: (512) 867-7421



CHAPTER 85. FLEXIBLE BENEFITS

34 TAC §§85.1, 85.3 - 85.5, 85.7, 85.9, 85.11 - 85.13

The Employees Retirement System of Texas ("ERS") adopts new 34 Texas Administrative Code ("TAC") §85.4 and §85.12, and amendments to 34 TAC §§85.1, 85.3, 85.5, 85.7, 85.9 and 85.13, concerning Flexible Benefits, without changes to the text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1568), and these rules will not be republished. Amended 34 TAC §85.11 is adopted with changes to the text as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1568), in order to correct nonsubstantive punctuation errors.

These sections are added or amended to comply with and conform to the provisions of the Internal Revenue Code, as amended, and the Texas Insurance Code, Chapter 1551, specifically §1551.206. Section 85.4 and §85.12 have been added to define and direct the administration of the State of Texas Employees Flexible Benefit Program (TexFlex).

New §85.4, concerning Separate Plans, specifies that provisions of this chapter constitute the separate plans for the dependent care reimbursement plan, health care reimbursement plan and premium redirection plan.

New §85.12, concerning Plan Qualification, adds information concerning the nondiscriminatory nature of the plan and the responsibility of the plan administrator to act if it determines that any discrimination in favor of highly compensated employees described under any applicable provision of the Code regarding such discrimination has occurred.

Section 85.1, concerning Introduction and Definitions, is amended to add a definition of Third Party Administrator.

Section 85.3, concerning Eligibility and Participation, is amended to make changes to participation requirements with regard to the process of becoming a participant.

Section 85.5, concerning Benefits, is amended to make changes to the references to the plan, specifying that this chapter, as amended, constitutes the TexFlex Plan, comprised of a dependent care reimbursement plan, a health care reimbursement plan and an insurance premium conversion plan.

Section 85.7, concerning Enrollment, is amended to make changes to the enrollment process by including electronic enrollment.

Section 85.9, concerning Payment of Claims from Reimbursement Accounts, is amended to make changes to the claims payment process by specifying the TPA's responsibility in the adjudication of claims.

Section 85.11, concerning Administration, is amended to make changes with regard to the overall administration of the TexFlex program by defining the roles and responsibilities of both the plan administrator and the TPA to whom certain responsibilities are delegated.

ERS received no comments regarding the new sections and amended sections.

The new sections and amendments are adopted under Texas Insurance Code §1551.052, which provides the ERS Board of Trustees the authority to adopt rules necessary to carry out its statutory duties and responsibilities under the Texas Employees Group Benefits Act.

§85.11. Administration.

(a) Plan administration. The flexible benefits plan is administered by the board of trustees of the Employees Retirement System of Texas. The board of trustees of the Employees Retirement System of Texas may designate and contract with a TPA to perform the day-to-day administrative responsibilities of the TexFlex plan. The TPA shall perform its duties as specified in its contract with the plan administrator, the Code, rules and all applicable state and federal laws and regulations.

(b) Plan administrator.

(1) The plan administrator shall administer all aspects of the plan.

(2) The plan administrator shall:

(A) make decisions on administrative matters concerning the plans;

(B) adopt and amend rules pursuant to the authority granted in Chapter 1551 and ensure that all rules, forms and procedures are consistent with state and federal law;

(C) enter into necessary contracts;

(D) take whatever action that it deems necessary to ensure compliance with applicable state and federal laws and regulations and the sections in this chapter; and

(E) review and approve all marketing materials or correspondence from the TPA to participants prior to publication or distribution.

(c) Third Party Administrator (TPA). The TPA shall perform all day-to-day administrative duties as assigned by the plan administrator.

(d) Miscellaneous provisions.

(1) The participation in the plan of an employee is subject to changes in applicable state and federal laws and regulations and the sections in this chapter.

(2) The plan year begins on September 1 of each year and ends on August 31. The grace period for filing claims for services used during the plan year ends on December 31.

(3) The mailing address of the plan administrator is: Plan Administrator, TexFlex Plan, Employees Retirement System of Texas, P.O. Box 13207, Austin, Texas 78711-3207.

(4) If a provision in the sections in this chapter conflicts with a federal law, rule, or regulation governing the plan, then the law, rule, or regulation prevails over the provision.

(5) The participation of an employee in the plan does not give the employee a legal or equitable right against the participant's employing state agency, institution of higher education, the plan administrator, TPA or the State of Texas except as provided in the sections in this chapter. The plan does not affect the terms of employment between a participant and the participant's employing state agency or institution of higher education.

(6) If a time limit is expressed in terms of a number of days and the last day of the time limit falls on a weekend or holiday recognized by the State of Texas for observance by state employees, the last day of the time period shall be the first business day after the weekend or holiday.

(7) The sections in this chapter prevail over any document used in the administration of the plan that has provisions or requirements which conflict with the sections.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Paula A. Jones

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Employees Retirement System of Texas

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For further information, please call: (512) 867-7421



CHAPTER 87. DEFERRED COMPENSATION

34 TAC §§87.1, 87.3, 87.5, 87.9, 87.15, 87.17, 87.19, 87.33

The Employees Retirement System of Texas ("ERS") adopts amendments to 34 Texas Administrative Code ("TAC") §§87.1, 87.3, 87.5, 87.9, 87.15, 87.19, and 87.33, concerning the Deferred Compensation Plan, without changes to the text as published in the March 18, 2005 issue of the *Texas Register* (30 TexReg 1572), and these rules will not be republished. Amended 34 TAC §87.17 is adopted with changes to the text as published in the March 18, 2005 issue of the *Texas Register* (30 TexReg 1583), in order to correct nonsubstantive punctuation errors.

These amendments are needed in order to update the plan rules, to clarify plan requirements, and to comport with federal law and administrative requirements. All referenced sections include changes required due to Internal Revenue Service's Revenue Procedure 2004-56 ("IRS Rev. Proc. 2004-56").

Section 87.1, concerning Definitions, is amended to revise certain definitions due to changes in federal regulations and suggestions in the IRS Rev. Proc. 2004-56.

Section 87.3, concerning Administrative and Miscellaneous Provisions, §87.5, concerning Participation by Employees, and §87.33, concerning The Economic Growth and Tax Relief and

Reconciliation Act, are amended to adjust the annual deferral limit to \$14,000 for 2005, per federal law. Section 87.3(c)(8) is amended to include new information on non-assignability of participant or beneficiary accounts.

Section 87.5(g) is amended to adjust the over age 50 catch-up limits to \$4,000 for 2005, per federal law. Other amended changes in §87.5 include amendments recommended by IRS Rev. Proc. 2004-56 regarding participant deferrals, disability, and military time.

Section 87.9, concerning Investment Products, is amended to clarify the identity of participants who will be contacted by the plan administrator to submit a prior funds transfer form for the disposition of deferrals and investment income.

Section 87.15(d)(3)(A), concerning Transfers, is amended to conform to IRS model amendments on plan-to-plan transfers and references the Income Tax Regulations.

Sections 87.17(a) - (e), concerning Distributions, and 87.33(g) are amended to clarify the purchase of service credit within the same state or another state and to allow service purchase through ERS, the Teacher Retirement System of Texas, the Judicial Retirement System of Texas Plans or any other retirement plan. In addition, §87.17 includes reference to the Income Tax Regulations and clarifies distribution requirements, including qualified domestic relations orders, unforeseeable emergencies, one-time elections, and loans. Section 87.17 revised the wording on dependent, which was clarified due to the amended §152(a) of the Internal Revenue Code and Working Families Tax Relief Act of 2004.

Section 87.19, concerning Reporting and Recordkeeping by Prior Plan Vendors, is amended to require plan vendors to report by the 5th of September, rather than the 15th of September, for the special end of the fiscal year (August 31st) report.

Section 87.33 is also amended to clarify the purchase of service from IRS Rev. Proc. 2004-56.

No comments were received regarding the amended sections.

The amendments are adopted under Government Code, §609.508, which provides authorization for the ERS Board of Trustees to adopt rules necessary to administer the deferred compensation plan.

§87.17. Distributions.

(a) In general. Upon request, the plan administrator shall authorize the distribution of a participant's deferrals and investment income in accordance with the applicable distribution agreement so long as:

- (1) the participant has attained age 70.5;
- (2) the participant has died;
- (3) the participant's employment with the State of Texas has terminated other than through death;
- (4) the participant has complied with subsection (1) of this section relating to the one-time election of distribution that does not exceed the dollar limit under Code §457(e)(9);
- (5) the participant elects to have any portion of his or her account balance transferred to a tax-qualified governmental defined benefit plan (as defined in §414(d) of the Code) in the same state or another state that provides for the acceptance of plan-to-plan transfers with respect to the participant; or

(6) the participant elects a transfer to be made if the transfer is either for the purchase of permissible service credit (as defined in §415(n)(3)(A) of the Code) under the receiving governmental defined benefit plan, or if the transfer is for a repayment to which §415 of the Code does not apply by reason of §415(k)(3) of the Code.

(b) Definitions.

(1) In subsections (m)-(o) of this section, the term "participant's deferrals and investment income" means the cash value of the participant's deferrals and investment income after considering all surrender charges, costs of insurance, forfeitures, and other similar charges.

(2) In this section, a beneficiary or secondary beneficiary "survives" another person only if the beneficiary or secondary beneficiary is alive on the day after the person's death.

(c) Content of a distribution agreement.

(1) A distribution agreement must contain but shall not be limited to:

(A) identifying information concerning the participant, including the date of birth and social security number of the participant;

(B) the name of the prior plan vendor or revised plan vendor covered by the agreement;

(C) the type of qualified investment product from which distributions will be made, including policy/certificate/or account number;

(D) the date on which the participant separated from service, attained age 70.5, or died, whichever is applicable;

(E) the beginning date of the distributions;

(F) the type of distribution;

(G) the amount to be distributed during each time period or the method for calculating the amount to be distributed during each time period; and

(H) beneficiary information, including date of birth(s) and social security number(s).

(2) The person filing the distribution agreement must attach a properly executed Form W-4P to the agreement.

(3) A distribution agreement must be consistent with the distribution options available for the qualified investment product covered by the agreement. The prior plan vendor agent/representative signature on the distribution agreement signifies that the distribution option is available and can be implemented as requested.

(d) Commencement of distributions. Notwithstanding anything in a distribution agreement:

(1) the earliest a participant or beneficiary may begin receiving a distribution is the 51st day after the occurrence that entitles the participant or beneficiary to the distribution, except this paragraph does not apply to a lump sum, an emergency withdrawal or a one-time election distribution;

(2) if the participant's age is less than age 70, the distribution period is 27.4 years plus the number of years that the participant's age is less than age 70, and can be made in monthly, quarterly or annual installments based on the account balance as of the end of the year prior to the year for which the distribution is being calculated; and

(3) A participant must begin receiving a distribution by the later of:

(A) April 1st of the year following the calendar year in which the participant attains age 70.5; or

(B) April 1st of the year following the year in which the participant retires or otherwise has a separation from employment.

(e) Filing of distribution agreements by participants.

(1) This subsection applies when a participant becomes entitled to a distribution because:

(A) the participant has attained age 70.5; or

(B) the participant's employment with the State of Texas has terminated other than through death.

(2) A participant must file a single distribution agreement for all qualified investment products in which the participant's deferrals are invested.

(3) Notwithstanding anything to the contrary in this subsection, a participant who has not separated from service and who has reached age 70.5 may file a distribution agreement if the participant wants to begin distributions. If distributions commence in the calendar year following the later of the calendar year in which the participant attains age 70.5 or the calendar year in which the separation from employment occurs, the distribution must be equal to the annual installment payment for the year, determined under the Uniform Lifetime Table of the Income Tax Regulations for the participant's age regarding types of distributions. This must also be paid before the end of the calendar year of commencement of distributions.

(4) Notwithstanding any other plan provision, amounts deferred by a former participant of the plan not yet payable or made available to such participant may be transferred to another eligible plan of which the former participant has become a participant, if:

(A) the plan receiving such amounts provides for its acceptance; and

(B) a participant separates from service with the participant's agency and accepts employment with another entity maintaining an eligible deferred compensation plan.

(5) A participant or a beneficiary of a participant who previously filed an irrevocable distribution election under the prior plan or under the revised plan may change that distribution election or cancel that distribution election by notifying the plan administrator. Such notification must be in writing on a distribution agreement form and received by the plan administrator at least 30 days prior to the scheduled distribution date.

(6) A participant may request a trustee-to-trustee transfer of assets from the prior plan or the revised plan to a governmental defined benefit plan in the same state or another state for the purchase of permissible service credit (as defined in the Code §414(d) and (p) and Code §415(n)(3)(A)) under such plan or a repayment to which Code §415 does not apply by reason of subsection (k)(3) thereof. The participant may elect to have any portion of the account balance transferred to a governmental defined benefit plan.

(7) Upon receipt of a certified copy of a qualified domestic relations order, a certified copy of a judgment, decree or order (including approval of a property settlement agreement) that relates to the provision of child support, alimony payments, or the marital property rights of a spouse or former spouse, child, or other dependent of a participant, and same is made pursuant to the domestic relations law of any state, then the amount of the participant's account balance shall be paid in the manner and to the person or persons so directed in the domestic relations order. Such payment shall be made without regard to whether the participant is eligible for a distribution of benefits under the plan.

The plan administrator or TPA shall establish reasonable procedures for determining the status of any such decree or order and for effectuating distribution pursuant to the domestic relations order. (§414(p) of the Code and §1.457-10(c) of the Income Tax Regulations)

(8) At a participant's or surviving spouse's request, the plan administrator may process a trustee-to-trustee transfer of an eligible rollover distribution upon receipt of appropriate instructions from the receiving plan.

(f) Minimum distributions during the life of a participant.

(1) This subsection applies to distributions to a participant during the life of the participant, notwithstanding anything to the contrary in the participant's distribution agreement.

(2) The amount distributed to the participant must be calculated so that the distributions:

(A) will be distributed over a period not exceeding the life expectancy of the participant as set forth in the Uniform Lifetime Table of the Income Tax Regulations for the participant's age on the participant's birthday for that year or the life expectancy of the participant and the participant's named beneficiary;

(B) will satisfy the minimum distribution requirements of the Code §457(d)(2), §401(a)(9), and associated statutes and regulations; and

(C) For the purpose of paragraph (2) of this subsection, life expectancies may not be recalculated annually. For any year, the participant can elect distribution of a greater amount not to exceed the amount of the remaining account balance in lieu of the amount calculated using this formula.

(3) The plan administrator shall reject a proposed distribution agreement that does not comply with paragraph (2) of this subsection. The plan administrator shall require the amendment of an existing distribution agreement that does not comply with paragraph (2) of this subsection.

(g) Review of distribution agreements by the plan administrator. The plan administrator shall review each distribution agreement received to ensure that:

(1) a distribution would be in compliance with the sections in this chapter; and

(2) the minimum distribution requirements of this section have been satisfied.

(h) Amendments of distribution agreements.

(1) Beginning date for a distribution. The beginning date for a distribution may be deferred or cancelled, and the amended distribution agreement must be received by the plan administrator no later than the 30th day before the original distribution begin date.

(2) Frequency of distribution. The frequency of a distribution may be amended if the plan administrator receives an amended distribution agreement no later than the 30th day before the next scheduled distribution.

(3) Amount of distribution. The amount to be distributed during each time period may be amended only if the plan administrator receives an amended distribution agreement no later than the 30th day before the next scheduled distribution.

(4) Beneficiaries.

(A) The primary and secondary beneficiaries named in a distribution agreement may be changed at anytime by filing a change

agreement with the agency coordinator of the state agency at which the participant was employed or by submitting a beneficiary designation form directly with the TPA, for the revised plan.

(B) Upon receipt of the change agreement, the agency coordinator shall send a copy of the agreement to the plan administrator.

(C) The change agreement is effective upon receipt by the plan administrator.

(D) A beneficiary designation that names a former spouse is invalid unless the designation was signed after the date of divorce and received by the plan administrator.

(5) Unforeseeable emergency distribution. Notwithstanding anything to the contrary in this subsection, a distribution agreement may be amended to relieve a severe financial hardship caused by an unforeseeable emergency.

(6) Procedures for amending a distribution agreement.

(A) A participant or beneficiary who wants to amend the participant's distribution agreement must file an amended distribution agreement with the plan administrator. The amended distribution agreement must contain the word "Amended" at the top of the agreement.

(B) Upon receipt of the amended distribution agreement, the plan administrator; shall promptly review the agreement for compliance with the sections in this chapter.

(C) If the amended distribution agreement does not comply with the sections in this chapter, the agreement will be returned to the participant or beneficiary for corrections.

(D) After the plan administrator receives a signed distribution agreement, the plan administrator and the prior plan vendor or TPA covered by the agreement shall take the steps specified in subsections (h) and (j) of this section.

(7) Effective date of amended distribution agreements is no later than 30 days after the plan administrator receives the form. An amended distribution agreement is effective with the next distribution.

(i) Procedure for making distributions.

(1) Upon receiving a letter of authorization, the prior plan vendor or TPA shall issue checks payable to the participant or beneficiary and mail the checks as instructed in the letter of authorization.

(2) The plan administrator may not complete any forms provided by a prior plan vendor in connection with a distribution. A prior plan vendor may not require the plan administrator to submit periodic letters of authorization beyond the initial letter of authorization unless the plan administrator has agreed in writing. A prior plan vendor may not impose any requirements as a prerequisite to a distribution that are not specifically mentioned in the sections in this chapter.

(3) The plan administrator shall provide each prior plan vendor with the names and signatures of the individuals who are authorized to sign letters of authorization.

(4) A prior plan vendor shall confirm each letter of authorization as instructed in the letter.

(j) Unforeseeable emergency distribution .

(1) The participant must request the unforeseeable emergency withdrawal by filing a completed emergency hardship withdrawal application with the plan administrator. An emergency hardship withdrawal application must show that the prerequisites for making an unforeseeable emergency withdrawal have been fulfilled.

(2) The plan administrator shall approve the unforeseeable emergency withdrawal if the plan administrator determines that:

(A) an unforeseeable emergency has occurred;

(B) the severe financial hardship cannot be relieved:

(i) through reimbursement or compensation by insurance or otherwise;

(ii) by liquidating the assets of the participant to the extent the liquidation of the assets would not itself cause severe financial hardship;

(iii) by cessation of deferrals under the plan;

(iv) by other distributions or nontaxable loans from the Plan or any other qualified retirement plan, or by borrowing from commercial sources on reasonable commercial terms; or

(v) through a combination of the actions specified in clauses (i) - (iii) of this subparagraph; and

(C) the unforeseeable emergency withdrawal would satisfy the federal regulations for unforeseeable emergency withdrawals under the Code §457.

(3) If the plan administrator approves an unforeseeable emergency withdrawal, the plan administrator shall determine the amount of the withdrawal. The amount may not exceed the amount reasonably needed to overcome the severe financial hardship, after considering the federal income tax liability resulting from the withdrawal.

(4) The term "unforeseeable emergency" means a severe financial hardship to a participant caused by:

(A) a sudden and unexpected illness or accident of a participant or of a participant's dependent (as defined in the Code §457, §152(a), and the Working Families Tax Relief Act of 2004;

(B) the loss of the property of a participant because of a casualty (including the need to rebuild a home following damage to a home not otherwise covered by homeowner's insurance, as a result of a natural disaster); or

(C) a similar extraordinary and unforeseeable circumstance arising from events beyond the control of a participant, which includes the prevention of imminent foreclosure or eviction from a participant's or beneficiary's primary residence, funeral expenses of participant's dependents (as defined in §152(a) of the Code and the Working Families Tax Relief Act of 2004), and payment of non-reimbursed medically necessary expenses, which includes non-refundable deductibles, as well as the cost of prescription drug medications.

(5) The term "unforeseeable emergency" excludes:

(A) the necessity to send a child to college;

(B) the purchase of a home;

(C) such emergency that is or may be relieved through:

(i) reimbursement or compensation from insurance or otherwise;

(ii) liquidation of the participant's assets, to the extent the liquidation would not itself cause severe financial hardship; or

(iii) cessation of deferrals under the plan. This includes other distributions or nontaxable loans from the Plan or any other qualified retirement plan, or by borrowing from commercial sources on reasonable commercial terms; and

(D) other similar circumstances.

(6) The plan administrator may rely on the information provided by a participant in connection with the participant's request for an emergency withdrawal. The participant is solely responsible for the sufficiency, accuracy, and veracity of the information.

(7) If the plan administrator denies a participant's request for an emergency withdrawal or if the participant disagrees with the amount of the approved emergency withdrawal, the participant may appeal to the Employees Retirement System of Texas in accordance with §87.23 of this title (relating to the Grievance Procedure).

(8) If the plan administrator approves a participant's request for an emergency withdrawal, the participant must agree to cease all deferrals, except deferrals to life insurance products, to both this plan and the TexaSaver 401(k) plan for a six month period following the approval.

(9) The plan administrator may not approve an emergency withdrawal request from a primary or secondary beneficiary.

(10) The plan administrator may not exceed the amount reasonably necessary to satisfy the emergency need (which may include any amounts necessary to pay any federal, state or local income taxes or penalties reasonably anticipated to result from the distribution).

(k) A participant may elect to receive a one-time distribution of the total account balance if:

(1) such amount does not exceed the \$5000 dollar limit under Code §457, §457(e)(9), or the dollar limit under Code §411(a)(11) if greater as of the date that payments commence or on the date of the participant's death. In such event, payment shall be made to the participant (or to the beneficiary if the participant is deceased) in a lump sum equal to the participant's account balance;

(2) no amount has been deferred under the plan with respect to such participant during the two-year period ending on the date of the distribution;

(3) there has been no prior distribution under the plan to such participant to which this subsection applied; and

(4) a one-time election form is completed and submitted to the plan administrator through the participant's state agency coordinator.

(l) Naming of beneficiaries. When a participant or beneficiary files a distribution agreement, the participant or beneficiary may name one or more primary and secondary beneficiaries. The naming of beneficiaries in a distribution agreement supersedes any previous naming of beneficiaries in a participation agreement or change agreement.

(m) Death of a participant when the participant has named a beneficiary.

(1) This subsection applies only if a participant has named a beneficiary in a participation agreement, change agreement, beneficiary designation form or distribution agreement.

(2) The plan administrator shall order a distribution to a primary beneficiary if the beneficiary:

(A) survives the participant; and

(B) is alive on the date of the order.

(3) The plan administrator shall order a distribution to a secondary beneficiary if:

(A) the secondary beneficiary survives the participant;

(B) the secondary beneficiary is alive on the date of the order; and

(C) no primary beneficiaries survive the participant.

(4) The plan administrator shall order a distribution in accordance with subsection (p) of this section if a primary or secondary beneficiary survives the participant but is not alive on the date of the order.

(5) This paragraph applies if a participant designates more than one primary beneficiary and more than one primary beneficiary survives the participant. The plan administrator shall order the distribution of the participant's deferrals and investment income to the surviving primary beneficiaries in equal shares unless the distribution agreement provides otherwise. The estates and heirs of the primary beneficiaries who did not survive the participant and the surviving secondary beneficiaries, if any, may not receive any benefits.

(6) This paragraph applies if a participant designates more than one secondary beneficiary, more than one secondary beneficiary survives the participant, and no primary beneficiary survives the participant. The plan administrator shall order the distribution of the participant's deferrals and investment income to the surviving secondary beneficiaries in equal shares unless the distribution agreement provides otherwise. The estates and heirs of the primary and secondary beneficiaries who did not survive the participant may not receive any benefits.

(7) The plan administrator shall order the lump-sum payment to the participant's estate of the balance of the participant's deferrals and investment income if:

(A) the participant named a primary and a secondary beneficiary but neither survived the participant; or

(B) the participant named a primary beneficiary but did not name a secondary beneficiary and the primary beneficiary did not survive the participant.

(8) The plan administrator shall order the lump-sum distribution of a participant's deferrals and investment income to the person entitled to receive the distribution if the person is alive on the date of the order and the person files a distribution agreement requesting a lump-sum distribution.

(9) When the plan administrator orders a distribution to a primary or secondary beneficiary, the plan administrator's order must be in accordance with the beneficiary's distribution agreement so long as the agreement complies with the sections in this chapter.

(10) This paragraph applies when the plan administrator orders other than a lump-sum distribution to a primary or secondary beneficiary and distributions to the participant did not begin before the participant's death. For distributions to a surviving spouse, any distribution made before the calendar year in which the participant would have attained age 70.5 is not a required minimum distribution. For the calendar year in which the participant would have attained age 70.5 or any later year, the amount of the minimum annual distribution payment may be treated as the amount of the required minimum distribution. Notwithstanding a primary or secondary beneficiary's distribution agreement, the amount distributed must be calculated so that the distributions:

(A) will begin no later than December 31 in the year that the participant would have attained age 70.5 or December 31 of the year following the participant's death, whichever is later for a spousal beneficiary; or

(B) December 31 of the year following the participant's death and entire amount must be distributed by the end of the fifth year following the year of participant's death for non-spousal beneficiary.

(C) will be made over the life of the person receiving the distributions or over a period not extending beyond the life expectancy of the person (using the single life table from the Income Tax Regulations);

(D) will be made in substantially non-increasing amounts;

(E) will be made annually or more frequently than annually after the first distribution; and

(F) will satisfy the minimum distribution requirements of the Code §457(d)(2), §401(a)(9), and associated statutes and regulations.

(11) This paragraph applies when the plan administrator orders other than a lump-sum distribution to a primary or secondary beneficiary and distributions to the participant began before the participant's death. Notwithstanding a primary or secondary beneficiary's distribution agreement, the amount distributed to the primary or secondary beneficiary must be calculated so that the distributions:

(A) will be made at least as rapidly as under the method of distribution selected by the participant; and

(B) will satisfy the minimum distribution requirements of the Code §457(d)(2), and §401(a)(9).

(12) If a participant dies before distributions to him began and the beneficiary or secondary beneficiary entitled to receive the participant's deferrals and investment income is the participant's surviving spouse, this paragraph applies.

(A) Paragraph (10) of this subsection applies to the distributions to the surviving spouse except as specified in this paragraph.

(B) Notwithstanding paragraph (10) of this subsection, the surviving spouse may delay the start of the receipt of the deferrals and investment income until a date not later than the date when the participant would have attained age 70.5.

(C) Notwithstanding paragraph (10) of this subsection, after a distribution to the surviving spouse begins, the entire amount must be paid over a period not exceeding the spouse's life expectancy using the single life table from the Income Tax Regulations for the beneficiary's age on the beneficiary's birthday for the year that the distribution begins, reduced by one for each year that has elapsed after that year.

(D) If the surviving spouse dies before distributions to the spouse begin, then the surviving spouse is a participant for the purpose of paragraph (10) of this subsection.

(13) For the purpose of paragraphs (10) - (12) of this subsection, life expectancies may not be recalculated annually.

(n) Death of a participant when the participant has not named a beneficiary.

(1) This subsection applies only when a participant has not named a beneficiary in a participation agreement, change agreement, beneficiary designation form, or distribution agreement.

(2) The plan administrator shall order the distribution to the participant's estate of the balance of the participant's deferrals and investment income.

(o) Death of a beneficiary.

(1) This subsection applies if:

(A) a participant named a beneficiary in a participation agreement, change agreement, or distribution agreement or a beneficiary designation form;

(B) the participant died;

(C) the beneficiary survived the participant but has since died;

(D) the plan administrator has ordered, in accordance with subsection (m) of this section, a distribution to the beneficiary or would have ordered a distribution to the beneficiary if the beneficiary had not died; and

(E) the beneficiary did not receive all the participant's deferrals and investment income before the beneficiary's death.

(2) If the deceased beneficiary filed a distribution agreement and the agreement names a primary beneficiary, the plan administrator shall:

(A) allow the primary beneficiary to have a distribution which will be made at least as rapidly as under the method of distribution selected by the participant, and which will also satisfy the minimum distribution requirements of the Code §457(d)(2), and §401(a)(9); or

(B) order a lump sum payment to the primary beneficiary's estate if the primary beneficiary survived the beneficiary who filed the distribution agreement but is not alive on the date of the order.

(3) If the deceased beneficiary filed a distribution agreement and the agreement names a secondary beneficiary, the plan administrator shall order a lump-sum payment to:

(A) the secondary beneficiary if:

(i) the secondary beneficiary is alive on the date of the order; and

(ii) no primary beneficiary survived the deceased beneficiary;

(B) the secondary beneficiary's estate if:

(i) the secondary beneficiary survived the deceased beneficiary;

(ii) the secondary beneficiary is not alive on the date of the plan administrator's order; and

(iii) no primary beneficiary survived the deceased beneficiary.

(4) The lump-sum payment must be made to the estate of the deceased beneficiary if:

(A) the deceased beneficiary's distribution agreement does not name a beneficiary;

(B) the deceased beneficiary did not file a distribution agreement; or

(C) no beneficiary named in the deceased beneficiary's distribution agreement survived the deceased beneficiary.

(5) When more than one primary or secondary beneficiary of a deceased beneficiary is entitled to a lump-sum distribution, the distributions must be made in equal shares unless the deceased beneficiary's distribution agreement provides otherwise.

(p) Distributions to minors and incompetents.

(1) The plan administrator may authorize the payment of a distribution to a person or entity other than the participant or beneficiary

otherwise entitled to receive the distribution if satisfactory evidence is presented to the plan administrator that the participant or beneficiary is:

(A) a minor; or

(B) has been adjudicated by a court of law as mentally incompetent and unable to provide a valid release, receipt and discharge for the payment or is deemed so by the plan administrator.

(2) If the conditions of the preceding paragraph are satisfied, the plan administrator shall make the distribution payable to the guardian of the participant or beneficiary. Such payments shall be considered a payment to such participant or beneficiary, and shall, to the extent made, be deemed a complete discharge of any liability of the Plan, State of Texas, plan administrator and TPA for all payments required under the plan.

(3) If no guardian has been appointed and after having obtained a proper release, the plan administrator shall make the distribution payable to:

(A) the person or entity maintaining custody of the participant or beneficiary;

(B) the custodian of the participant or beneficiary under the Texas Uniform Gifts to Minors Act (Texas Property Code, §141.002 et seq.) if the participant or beneficiary resides in the State of Texas;

(C) the custodian of the participant or beneficiary under a law similar to the Texas Uniform Gifts to Minors Act if the participant or beneficiary resides outside the State of Texas; or

(D) the court of law with jurisdiction over the participant or beneficiary.

(q) Distributions to missing persons.

(1) This subsection applies when the plan administrator is unable to determine the location of a participant or beneficiary who is entitled to a distribution.

(2) When the plan administrator does not know the location of a participant or beneficiary, the agency coordinator for the participant or beneficiary must send a certified letter to the last known address of the participant or beneficiary.

(3) If the certified letter does not result in the discovery of the location of the participant or beneficiary, the agency coordinator shall inform the plan administrator and provide proof to the plan administrator that the certified letter was sent.

(4) When the plan administrator does not know the location of a participant or beneficiary, the agency coordinator, TPA or plan administrator shall make a reasonable attempt to locate the participant or beneficiary through certified mail at the last known address, through notification to the Social Security Administration, the Pension Benefit Guaranty Corporation, or other appropriate source. If the participant has not responded within six (6) months, upon receiving the notification and proof of mailing, the plan administrator may direct that all benefits due the participant or beneficiary be deposited in a qualified investment product or trust fund that the plan administrator has specifically designated for this purpose and shall continue to hold the benefits due such person.

(r) Processing of distributions and emergency withdrawals. A prior plan vendor or TPA shall process distributions and emergency withdrawals and resolve administrative problems with the plan administrator within a reasonable length of time, not to exceed the 30th day

after receiving a letter of authorization for distributions and not to exceed the 15th day after receiving a letter of authorization for emergency withdrawals.

(s) Loans to participants. The plan administrator is authorized to implement procedures to establish a loan program for the revised plan in compliance with Code §72(p)(2). Plan loans shall be permitted only from assets deposited in the revised plan. Participants with account balances in the prior plan must transfer those balances to the revised plan in order to qualify for a plan loan. The security of the loan is a pledge or application fee of \$50 per loan. General loans are processed without any pre-loan paperwork. A participant's execution on the loan check authorizes the plan administrator to make payroll deductions from the participant's compensation. The loan balance may be prepaid at any time without penalty. The maximum number of active loans available to any participant at any given time is two (2) per plan.

(1) Loans made pursuant to this section (when added to the outstanding balance of all other loans made by the plan to the participant) shall be limited to the lesser of:

(A) \$50,000 reduced by the excess (if any) of the highest outstanding balance of loans from all plans to the participant during the one year period ending on the day before the date on which such loan is made, over the outstanding balance of loans from all plans to the participant on the date on which such loan was made; or

(B) the greater of one half (1/2) of the present value of the non-forfeitable accrued benefit of the participant under the plan or \$10,000.

(2) Any loan may not be for an amount less than \$1,000.

(3) The terms of the loan shall:

(A) require level amortization with payments not less frequently than quarterly throughout the repayment period, except that alternative arrangements for repayment may apply in the event that the participant is on a bona fide unpaid leave of absence for military leave within the meaning of §414(u) of the Code or for the duration of a leave which is due to qualified military service;

(B) require that the loan be repaid within five years unless the participant certifies in writing to the plan administrator that the loan is to be used to acquire a principal residence; and

(C) provide for either a general purpose loan or a principal residence loan with rates and terms fixed for the life of the loan. Subject to change from time to time, the interest rate for repayment is one percent (1%) over the prime rate published in the Wall Street Journal on the last business day of the prior month.

(4) Any loan to a participant under the plan shall be secured by the pledge of the portion of the participant's interest in the plan invested in such loan.

(5) In accordance with the federal Soldiers' & Sailors' Civil Relief Act of 1940, interest will accrue during the period of suspended payments at the original loan rate or at the rate of six percent (6%), whichever is less. In no event will interest on any loan exceed the maximum rate permitted by applicable law.

(6) In the event that a participant fails to make any loan payment within 90 days after the date such payment is due, a default on the loan shall occur. In the event of such default, all remaining payments on the loan shall be immediately due and payable, effective as of the first day of the calendar month following the month in which a default occurs. In the case of any loan default, the plan administrator shall apply the portion of the participant's interest in the plan held as

security for the loan in satisfaction of the loan on the date of severance from employment. In addition, the plan administrator shall take any legal action it shall consider necessary or appropriate to enforce collection of the unpaid loan, and the costs of any legal proceeding or collection including, but not limited to the plan administrator's and TPA's reasonable attorneys fees, costs and prejudgment and postjudgment interest, shall be charged to the account balance of the participant. Any defaulted loans incurred will continue to accrue interest and will reduce the number of available loans. Amounts borrowed through the loan program are not taxable distributions and are not subject to federal income taxes, unless the participant defaults on the loan. Loans are considered in default if no payments have been made for 90 days, or general loans are not paid off within five (5) years. If a participant retires or separates from employment, payroll deductions will stop and the loan is immediately due and payable in full. If the loan is not paid within the 90 day period, the outstanding balance, pursuant to IRS regulations, will be considered a distribution, and the plan administrator shall report the loan to the IRS as a taxable distribution in the year that the loan defaults. In the event a loan is outstanding or in default or both hereunder on the date of a participant's death, the participant's estate shall be the beneficiary as to the portion of participant's interest in the plan invested in such loan.

(7) In accordance with Code §72 (p) and associated Treasury Regulations at §1.72(p)-1, the Plans will suspend payments for up to twelve (12) months for non-military leaves of absence if the participant is on a bona fide leave of absence and the leave is either without pay, or the participant's after-tax pay is less than the installment payment amount under the terms of the loan. When payments resume, installment payments may not be less than the amount required under the terms of the original loan. In no event may the term of the loan be extended beyond its original due date; accept upon express approval of the hardship committee. Therefore, the participant must seek a revised amortization schedule and pay higher monthly payments or continue the original payment schedule and make one or more additional payments before the end of the loan term in sufficient amounts to pay the loan in full when due.

(8) As a condition of the loan, a participant shall be required to enter into an irrevocable agreement authorizing the employer to make payroll deductions from his or her compensation as long as the participant is an employee and to transfer such payroll deduction to the Trustee or TPA in payment of such loan plus interest. Repayments of a loan shall be made by payroll deduction of equal amounts (comprised of both principal and interest) from each paycheck, with the first such deduction to be made as soon as practicable after the loan funds are disbursed; provided, however:

(A) that a participant may prepay the entire outstanding balance of his or her loan at any time without penalty (but may not make a partial prepayment); and

(B) that if any payroll deductions cannot be made in full because a participant is on an unpaid leave of absence or is no longer employed by a participating employer (that has consented to make payroll deductions for this purpose) or the participant's paycheck is insufficient for any other reason, the participant shall pay directly to the plan the full amount that would have been deducted from the participant's paycheck, with such payment to be made by the last business day of the calendar month in which the amount would have been deducted. Such participants will repay themselves with interest through payroll deductions in equal installments over the duration of the loan. Loan repayments are deducted each pay period and posted along with contributions. Loan refinancing is not available.

(t) Federal withholding and reporting requirements.

(1) A prior plan vendor or TPA shall file all reports required by the Internal Revenue Service (IRS) when any deferrals and investment income are distributed or otherwise made available to a participant or beneficiary. Payments made to a participant during the participant's life must be reported as taxable wages on a Form 1099-R or another appropriate form which may be hereafter promulgated by the IRS. Pursuant to the provisions of Internal Revenue Service Revenue Ruling 86-109 (1986-2 CB 196), payments to the beneficiary of a deceased participant must be reported on IRS Form 1099-R (or another appropriate form which may be hereafter promulgated by the IRS) as taxable income of the beneficiary.

(2) A prior plan vendor or TPA shall file an application for authorization to act as agent of the State of Texas, or effective January 1, 1999, the plan, with the District Director of the Internal Revenue Service Center where the prior plan vendor or TPA files its returns. The application shall include Form 2678 - Employer Appointment of Agent under §3504 of the Code, which shall be supplied by the plan administrator, and shall be completed and filed in accordance with the instructions set forth in Internal Revenue Service Publication 1271. The prior plan vendor shall promptly furnish to the plan administrator a copy of such vendor's letter of authorization from the Internal Revenue Service approving the appointment of the prior plan vendor as agent.

(3) When reporting to the Internal Revenue Service, the prior plan vendor and TPA shall use the vendor's Federal Employer Identification Number and shall comply with all requirements of Revenue Procedure 70-6 as set out in Internal Revenue Service Publication 1271 and as subsequently amplified or superseded by subsequent Revenue Procedures. A prior plan vendor may not use the federal employer identification number of the plan, plan administrator, TPA, or the State of Texas. Regardless of how many qualified investment products a prior plan vendor sponsors, the vendor must use the same federal employer identification number for all reports to the Internal Revenue Service.

(4) Federal tax withholding is mandatory for distributions to participants. A prior plan vendor or TPA shall accurately determine any amounts to be withheld for federal taxes based on a Form W-4P submitted by the participant at the time of a distribution. Distributions with a periodic payout of less than 10 years or a lump sum distribution are subject to a mandatory 20% federal income tax withholding. If no Form W-4P is provided, the participant shall be taxed as "single with no dependents." Vendors who maintain participant account balances in the prior plan shall provide the required IRC §402(f) safe harbor notice to all 457 plan participants or their beneficiaries prior to the payment of an eligible rollover distribution. The Tax Equity and Fiscal Responsibility Act does not apply to a deferred compensation plan governed by the Code §457.

(5) Total death benefits, including life insurance proceeds, are taxable as ordinary income to the beneficiary and must be reported on a Form 1099-R in accordance with paragraph (m) of this subsection.

(6) A prior plan vendor or TPA shall mail a copy of all reports filed with the Internal Revenue Service about a participant or beneficiary to the participant's or beneficiary's home address.

(u) Notwithstanding any provisions to the contrary, the option to receive periodic distributions from a product in the "prior plan" by a terminated participant or beneficiary whose original distribution begins on or after October 1, 2004 is removed. Effective October 1, 2004, terminating participants and beneficiaries must transfer all funds to the revised plan, receive a lump sum distribution of their entire plan balance, or roll their entire account balance into an account outside of the prior plan.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 9, 2005.

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Paula A. Jones

General Counsel

Employees Retirement System of Texas

Effective date: May 29, 2005

Proposal publication date: March 18, 2005

For further information, please call: (512) 867-7421

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER A. REGULATIONS GOVERNING HAZARDOUS MATERIALS

37 TAC §4.1

The Texas Department of Public Safety adopts amendments to §4.1, concerning Regulations Governing Hazardous Materials, without changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1426).

The amendments to the section are necessary in order to ensure that the Federal Hazardous Material Regulations, incorporated by reference in the section, reflects all amendments and interpretations issued through April 1, 2005. A second amendment is necessary in order to delete the requirement of reporting a hazardous material incident to the department's Motor Carrier Bureau.

On April 11, 2005, the department held a public hearing to receive comment(s) from all interested person(s) regarding adoption of the amendments. No person(s) appeared at the public hearing nor were any comment(s) received.

The amendments are adopted pursuant to Texas Government Code, §411.018, which authorizes the director to adopt all or part of the federal hazardous materials rules by reference; and Texas Transportation Code, §644.051, which authorizes the director to adopt all or part of the federal safety regulations by reference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2005.

TRD-200501772

Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
Effective date: May 22, 2005
Proposal publication date: March 11, 2005
For further information, please call: (512) 424-2135



SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §§4.11, 4.13 - 4.19

The Texas Department of Public Safety adopts amendments to §4.11 and §§4.13 - 4.19, concerning Regulations Governing Transportation Safety, without changes to the proposed text as published in the March 11, 2005, issue of the *Texas Register* (30 TexReg 1427).

The amendments to §4.11 are necessary in order to ensure that the Federal Motor Carrier Safety Regulations, incorporated by reference in the section, reflects all amendments and interpretations issued through April 1, 2005. An additional amendment to §4.11 reformats subsection (c)(2) - (7) relating to applicability of regulations.

The amendments to §4.13 are necessary in order to clarify the initial training and certification requirements for peace officers certified under this section.

The amendments to §4.14 are necessary in order to clarify what is required of certain municipalities and counties when an officer's certification status changes. Further amendment to the section reflects a change being made to the Memorandum of Understanding process utilized by the department for municipal and county certification requirements.

The amendments to §4.15 are necessary in order to further clarify department procedures for assigning motor carrier safety ratings in the Safety Audit Program and to establish a standard for judicial review of this process.

The amendments to §4.16 are necessary in order to clarify department procedures for the collection of administrative penalties assessed and the issuance of impoundment orders.

The amendments to §4.17 are necessary in order to clarify department procedures for conducting informal hearings, to describe when an administrative penalty becomes a final agency decision, and to establish a standard for judicial review of this process.

The amendments to §4.18 are necessary in order to clarify how an out-of-service order issued under this subchapter becomes a final agency decision, and to establish a standard for judicial review of this process.

The amendments to §4.19 are necessary in order to make this section consistent with the associated statute, Texas Transportation Code, §643.252.

On April 11, 2005, the department held a public hearing to receive comment(s) from all interested person(s) regarding adoption of the amendments. No person(s) appeared at the public hearing nor were any comment(s) received.

The amendments are adopted pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations by reference.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 2, 2005.

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Thomas A. Davis, Jr.
Director
Texas Department of Public Safety
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For further information, please call: (512) 424-2135



PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.7

The Texas Commission on Fire Protection (TCFP) adopts the repeal of §421.7, concerning recognition of previous volunteer training, in Chapter 421, entitled Standards for Certification. The repeal is adopted without changes to the proposal as published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1603).

The purpose of the proposed repeal is to delete an obsolete rule addressing a situation that no longer exists. In 1997, a statutory change conformed the volunteer fire fighter program to be consistent with the paid fire fighter program. The repealed rule relates to training obtained prior to 1992 under the previous volunteer program. This rule is no longer applicable and is being deleted.

No comments were received regarding the proposed repeal.

The repeal is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §419.008 and §419.029, are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on May 6, 2005.
TRD-200501825

Gary L. Warren, Sr.
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 239-4921



CHAPTER 423. FIRE SUPPRESSION

The Texas Commission on Fire Protection (TCFP) adopts amendments to §423.203 and §423.303, concerning minimum standards for basic aircraft rescue fire fighting personnel certification and basic marine fire protection personnel certification, in Chapter 423, entitled Fire Suppression. The amendments are adopted with changes to the proposed text published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1604). The change is non-substantive and consists of changing the references to the Texas Department of Health to the State Department of Health Services to reflect that agency's name change.

The purpose of the adopted amendments is to delete obsolete and redundant language referencing hours of instruction requirements for out-of-state or military training programs submitted to the commission to determine equivalency for certification.

The amendments are adopted in conjunction with similar amendments to Chapters 421, 427, 429, 431, 433, 439, and 453 of this title, which are published concurrently in this issue of the *Texas Register*. These amendments remove the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific number of hours of instruction, to assure student competency at the completion of fire fighter training. Upon adoption of these rules, equivalency of hours will no longer be relevant as a specified number of hours will no longer be required.

No comments were received regarding the proposed amendments.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

SUBCHAPTER B. MINIMUM STANDARDS FOR AIRCRAFT RESCUE FIRE FIGHTING PERSONNEL

37 TAC §423.203

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§423.203. Minimum Standards for Basic Aircraft Rescue Fire Fighting Personnel Certification.

(a) In order to obtain basic aircraft rescue fire fighting personnel certification the individual must:

(1) hold basic structure fire protection personnel certification; and

(2) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as an Airport Fire Fighter; or

(3) complete a commission approved aircraft rescue fire suppression training program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved aircraft rescue fire suppression training program shall consist of one of the following:

(A) a commission approved Basic Aircraft Rescue Fire Suppression curriculum as specified in Chapter 2 of the commission's Certification Curriculum Manual. This course must be taught by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Training Facility Certification); or

(B) an out-of-state training program that has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved basic aircraft rescue fire suppression curriculum; or

(C) a military training program that has been submitted to the commission for evaluation and found to be equivalent to or to exceed the commission approved basic aircraft rescue fire suppression curriculum;

(b) A person who holds or is eligible to hold a certificate upon employment as a part-time aircraft rescue firefighter may be certified as an aircraft rescue fire fighting personnel, of the same level of certification, without meeting the applicable examination requirements.

(c) If a person holds a current certification as a part-time aircraft rescue firefighter, the Department of State Health Services emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Department of State Health Services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Executive Director

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SUBCHAPTER C. MINIMUM STANDARDS FOR MARINE FIRE PROTECTION PERSONNEL

37 TAC §423.303

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical,

and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

§423.303. *Minimum Standards for Basic Marine Fire Protection Personnel Certification.*

(a) In order to obtain basic Marine Fire Protection Personnel certification the individual must:

(1) hold basic structure fire protection personnel certification;

(2) complete a training program specific to marine fire protection consisting of one of the following:

(A) complete the commission approved Basic Marine Fire Protection Curriculum as specified in Chapter 3, of the commission's Certification Curriculum Manual, as approved by the commission in accordance with Chapter 443 of this title (relating to Certification Curriculum Manual). The commission approved marine fire protection curriculum must be taught by a training facility that has been certified by the commission as provided in Chapter 427 of this title (relating to Training Facility Certification); or

(B) an out-of-state training that has been submitted to the commission for evaluation and found to be equivalent to or exceed the commission approved Basic Marine Fire Protection Curriculum; or

(C) a military training program that has been submitted to the commission for evaluation and found to be equivalent to the commission approved Basic Marine Fire Protection Curriculum.

(3) successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification) prior to assignment.

(b) A person who holds or is eligible to hold a certificate upon employment as a part-time marine fire protection personnel may be certified as a marine fire protection personnel, of the same level of certification, without meeting the applicable examination requirements.

(c) If a person holds a current certification as a part-time marine fire protection personnel, the Department of State Health Services emergency care attendant certification may be satisfied by documentation of equivalent training or certification in lieu of current certification by the Department of State Health Services.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 427. TRAINING FACILITY CERTIFICATION

The Texas Commission on Fire Protection (TCFP) adopts amendments to §§427.1, 427.3, 427.5, 427.9, 427.11, 427.15, 427.17, 427.19, 427.201, 427.203, 427.205, 427.207, and 427.209, and a new §427.18, concerning requirements for on-site training providers, including a new rule regarding live fire training evolutions, and requirements for distance training providers, in Chapter 427, entitled Training Facility Certification. The amendments and new rule are adopted without changes to the proposed text published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1609).

The purpose of the adopted amendments and new rule is to align TCFP rules with National Fire Protection Association Standard 1403 regarding requirements for certified training facilities conducting fire protection personnel training in the state.

The amendment to §427.1, Minimum Standards for Certified Training Facilities for Fire Protection Personnel: adds requirements that facilities include standard operating procedures and qualified instructors; requires that letters of commitment be maintained on-site and be available for review; provides that approved courses are subject to audit; requires reporting of deviations from approved course schedule or content; and places additional duties upon the academy coordinator. The amendment to §427.3, Facilities: makes grammatical changes for clarity; adds requirements for an effective learning environment; and deletes references to other provisions and standards.

The amendment to §427.5, Apparatus, adds the words "certification training" for clarification, and adds a requirement for facilities approved for hazardous materials technician certification training. The amendment to §427.9, Equipment, adds requirements for use of self-contained breathing apparatus. The amendment to §427.11, Reference Material, requires that the reference library be readily and easily accessible to students and instructors. The amendment to §427.15, Testing Procedures, changes "subchapter" to "title" to reflect the proper citation, changes "required" to "recommended" with regard to hours of training, and requires that a passing score of 70 percent must be achieved on the comprehensive final. The amendment to §427.17, Staff, clarifies that the requirements in subsection (f) apply to coordinators or instructors who do not meet the requirements of subsections (b) or (d).

New §427.18, Live Fire Training Evolutions, provides requirements for all live fire training evolutions conducted during basic certification training of fire protection personnel.

The amendment to §427.19, General Information, clarifies which changes in status require notification, and provides that a certification of a training facility may be revoked, suspended, or probated if the facility fails to meet at least a 70 percent student pass rate on the state certification exam per course.

The amendment to §427.201, Minimum Standards for Distance Training Provider: requires that distance training (internet or intranet) include some level of interactivity; requires that approved courses are subject to audit; requires reporting of deviations from the approved course schedule or content; places additional duties upon the academy coordinator; and provides that distance training facilities comply with Subchapter A of Chapter 427.

The amendment to §427.203, Records, is a clerical correction. The amendment to §427.205, Testing Procedures, changes "required" to "recommended" with regard to hours of training, and requires that a passing score of 70 percent must be achieved on the comprehensive final. The amendment to §427.207, Staff,

clarifies that the requirements in subsection (f) apply to coordinators or instructors who do not meet the requirements of subsections (b) or (d). The amendment to §427.209, General Information, provides that a certification of a training facility may be revoked, suspended, or probated if the facility fails to meet at least a 70 percent student pass rate on the state certification exam per course.

No comments were received regarding the proposed amendments and new rule.

The TCFP has determined these amendments and the new rule to be in compliance with Texas Government Code, §419.022(b).

SUBCHAPTER A. ON-SITE CERTIFIED TRAINING PROVIDER

37 TAC §§427.1, 427.3, 427.5, 427.9, 427.11, 427.15, 427.17 - 427.19

The amendments and new rule are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. DISTANCE TRAINING PROVIDER

37 TAC §§427.201, 427.203, 427.205, 427.207, 427.209

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 429. MINIMUM STANDARDS FOR FIRE INSPECTORS

The Texas Commission on Fire Protection (TCFP) adopts amendments to §429.3 and §429.203, concerning minimum standards for basic fire inspector certification and minimum standards for basic fire inspector certification (new track), in Chapter 429, entitled Minimum Standards for Fire Inspectors. The amendments are adopted without changes to the proposed text published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1613).

The purpose of the amendments is to reflect the move on the part of the TCFP from requirements of specific hours of instruction to competency-based outcomes, and to clarify course requirements.

The amendments to §429.3 and §429.203 delete obsolete language referencing hours of instruction requirements for training programs. The amendment to §429.3 changes the training program requirement beyond the basic course and Fire Inspection Principles I from any combination of five courses (specifically - Fire Prevention Specialist II; Plans Review for Inspectors; Code Management: A Systems Approach; Management of Fire Prevention Programs; and Strategic Analysis of Fire Prevention Programs) to a requirement that two of the courses must be completed.

The amendments are adopted in conjunction with similar amendments to Chapters 421, 423, 427, 431, 433, 439, and 453 of this title, which are published concurrently in this issue of the *Texas Register*. These amendments remove the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific number of hours of instruction, to assure student competency at the completion of fire fighter training.

No comments were received regarding the proposed amendments.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

SUBCHAPTER A. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION BASED ON REQUIREMENTS IN EFFECT PRIOR TO JANUARY 1, 2005

37 TAC §429.3

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas

Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INSPECTOR CERTIFICATION

37 TAC §429.203

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 431. FIRE INVESTIGATION

The Texas Commission on Fire Protection (TCFP) adopts amendments to §§431.3, 431.5, 431.7, and 431.203, concerning minimum standards for arson investigator certification and minimum standards for fire investigator certification, in Chapter 431, entitled Fire Investigation. The amendments are adopted without changes to the proposed text published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1614).

The purpose of the adopted amendments is to reflect the move on the part of TCFP away from requirements of specific hours of instruction to competency-based outcomes, to clarify course requirements, and to correct clerical errors.

The amendments to §431.3 and §431.203 delete language referencing hours of instruction requirements for training programs; and change the training program requirement beyond the basic course and Fire Inspection Principles I from any combination of five courses (specifically - Fire Prevention Specialist II; Plans Review for Inspectors; Code Management: A Systems Approach; Management of Fire Prevention Programs; and Strategic Analysis of Fire Prevention Programs) to a requirement that two of the courses must be completed.

The amendments to §431.3 and §431.203 are adopted in conjunction with similar amendments to Chapters 421, 423, 427, 429, 433, 439, and 453 of this title, which are published concurrently in this issue of the *Texas Register*. These amendments remove the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific number of hours of instruction, to assure student competency at the completion of fire fighter training.

The amendments to §431.5 and §431.7 correct the same clerical error in each rule - the reference to subsection (d) is corrected to subsection (c), and are not connected with the group of amendments to rules listed in the previous paragraph.

No comments were received regarding the proposed amendments.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §§431.3, 431.5, 431.7

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.203

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 433. MINIMUM STANDARDS FOR DRIVER/OPERATOR-PUMPER

37 TAC §433.3

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §433.3, concerning minimum standards for driver/operator-pumper certification, in Chapter 433, entitled Minimum Standards for Driver/Operator-Pumper. The amendment is adopted without changes to the proposed text published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1616). The purpose of the amendment is to delete obsolete language referencing hours of instruction requirements for training programs.

The amendment to §433.3 is adopted in conjunction with similar amendments to Chapters 421, 423, 427, 429, 431, 439, and 453, which are published concurrently in this issue of the *Texas Register*. These amendments remove the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific number of hours of instruction, to assure student competency at the completion of fire fighter training.

No comments were received regarding the proposed amendment.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas

Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §§439.5, 439.15, 439.17

The Texas Commission on Fire Protection (TCFP) adopts amendments to §§439.5, 439.15, and 439.17, concerning procedures for conducting written and/or performance examinations, testing for certification status, and the number of test questions, in Chapter 439, entitled Examinations for Certification. The amendments are adopted without changes to the proposed text published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1616).

The purpose of the amendments is to reflect the move on the part of TCFP from requirements of specific hours of instruction to competency-based outcomes, and to make minor changes in terminology.

The amendments to §439.5 and §439.17 are adopted in conjunction with similar amendments to Chapters 421, 427, 429, 431, 433, and 453, which are published concurrently in this issue of the *Texas Register*. These amendments remove the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific number of hours of instruction, to assure student competency at the completion of fire fighter training. The amendment to §439.15 replaces the word "assignment" with the word "appointment" to provide consistency with other rule provisions.

No comments were received regarding the proposed amendments.

The TCFP has determined these amendments to be in compliance with Texas Government Code, §419.022(b).

The amendments are adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas

Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 441. CONTINUING EDUCATION

37 TAC §441.5

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §441.5, concerning general continuing education requirements, in Chapter 441, entitled Continuing Education. The amendment is adopted without changes to the proposed text published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1618). The purpose of the amendment is to provide an additional exemption to the requirement of continuing education, and to clarify the need for documentation.

The adopted amendment expands the rule language regarding exemptions to continuing education requirements by adding documented activation to military service to the conditions under which an exemption might be granted. This additional condition applies to members of a paid or volunteer fire department who are on an extended leave for six months or longer, as well as those persons who are not members of a paid or volunteer fire department who are unable to perform work substantially similar in nature to the work performed by fire protection personnel appointed to that discipline.

No comments were received regarding the proposed amendment.

The TCFP has determined the amendment to be in compliance with Texas Government Code, §419.022(b).

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to continuing education programs and other matters that relate to the competence and reliability of persons to assume and discharge the responsibilities of fire protection personnel, and to prescribe the means of presenting evidence of fulfillment of those qualifications.

Texas Government Code, §§419.008, 419.022, and 419.032(b) are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 451. FIRE OFFICER

SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE OFFICER II

37 TAC §451.203

The Texas Commission on Fire Protection (TCFP) adopts an amendment to §451.203, concerning minimum standards for Fire Officer II certification, in Chapter 451, entitled Fire Officer. The amendment is adopted without changes to the proposed text published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1618). The purpose of the amendment is to provide consistency with certain limitations on the certification of Associate Instructors.

The adopted amendment deletes the Associate Fire Instructor Certification as one of the options that an individual may hold to meet the instructor requirements to be certified as a Fire Officer II. The Associate Instructor Certification is for non fire service personnel. To be certified as a Fire Officer II an individual must hold a basic certification in structural, marine or aircraft rescue fire fighting. Individuals who meet those requirements do not qualify for Associate Instructor.

No comments were received regarding the proposed amendment.

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; and Texas Government Code, §419.032(b), which provides the TCFP with the authority to establish minimum qualifications relating to certification.

Texas Government Code, §419.008 and §419.032(b) are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 453. MINIMUM STANDARDS FOR HAZARDOUS MATERIALS TECHNICIAN

37 TAC §453.3

Texas Commission on Fire Protection (TCFP) adopts an amendment to §453.3, concerning minimum standards for hazardous materials technician, in Chapter 453, entitled Minimum Standards for Hazardous Materials Technician. The amendment is adopted without changes to the proposed text published in the March 18, 2005, issue of the *Texas Register* (30 TexReg 1619). The purpose of the proposed amendment is to delete language referencing hours of instruction requirements for training programs.

The amendment is adopted in conjunction with similar amendments to Chapters 421, 423, 427, 429, 431, and 439 of this title, which are published concurrently in this issue of the *Texas Register*. These amendments remove the references to required hours of instruction in the text of the affected rules. The intent of this change is to move towards an emphasis on competency-based outcomes, measured by physical skills evaluation and written testing, rather than reliance on a specific number of hours of instruction, to assure student competency at the completion of fire fighter training.

No comments were received regarding the proposed amendment.

The TCFP has determined the amendment to be in compliance with Texas Government Code, §419.022(b).

The amendment is adopted under Texas Government Code, §419.008, which provides the TCFP with the authority to adopt rules for the administration of its powers and duties; Texas Government Code, §419.022, which provides the TCFP with authority to establish minimum educational, training, physical, and mental standards; and Texas Government Code, §419.029, which provides the TCFP with the authority to establish minimum curriculum requirements for training facilities.

Texas Government Code, §§419.008, 419.022, and 419.029 are affected by this rulemaking.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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REVIEW OF AGENCY RULES

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review*; (2) notices of *intention to review*, which invite public comment to specified rules; and (3) notices of *readoption*, which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (<http://www.sos.state.tx.us/texreg>). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative Code* on the web site (<http://www.sos.state.tx.us/tac>).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Texas Department of Agriculture (the department) files this notice of intention to review and consider for readoption, revision or repeal, Texas Administrative Code, Title 4, Part 1, Chapter 4, concerning Co-operative Marketing Associations, Chapter 5, concerning Fuel Quality, and Chapter 6, concerning Seed Arbitration, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review each of their rules every four years and consider the rules under review for readoption, revision or repeal. The review must include an assessment of whether the original justification for the rules continues to exist.

As part of the review process, the department proposes the amendment of Title 4, Part 1, §4.2. The proposed amendment may be found in the Proposed Rules section of this issue of the *Texas Register*. The assessment of Title 4, Part 1, Chapters 4, 5 and 6 by the department at this time indicates that with the exception of the section proposed for amendment, the reason for readopting without changes all remaining sections in Chapters 4, 5 and 6 continues to exist.

The department is accepting comments on the review of Chapters 4, 5 and 6, specifically, as to whether the reason for readopting Chapters 5 and 6 without changes, and Chapter 4 with the proposed amendment continues to exist. Comments or questions on this notice of intention to review may be submitted within 30 days following the date of publication of this notice in the *Texas Register* to David Kostroun, Assistant Commissioner for Regulatory Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200501846

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: May 9, 2005

The Texas Department of Agriculture (the department) files this notice of intention to review and consider for readoption, revision or repeal, Texas Administrative Code, Title 4, Part 1, Chapter 7, concerning Pesticides, pursuant to the Texas Government Code, §2001.039. Section 2001.039 requires state agencies to review each of their rules every four years and consider the rules under review for readoption, revision or repeal. The review must include an assessment of whether the original justification for the rules continues to exist. The assessment of Title 4, Part 1, Chapter 7 by the department at this time indicates that the reason

for readopting without changes all sections in this chapter continues to exist.

The department is accepting comments on the review of Chapter 7, specifically, as to whether the reason for readopting Chapter 7 without changes continues to exist. Comments or questions on this notice of intention to review may be submitted within 30 days following the date of publication of this notice in the *Texas Register* to Phil Tham, Assistant Commissioner for Pesticide Programs, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711.

TRD-200501847

Dolores Alvarado Hibbs
Deputy General Counsel
Texas Department of Agriculture
Filed: May 9, 2005

Texas Department of Licensing and Regulation

Title 16, Part 4

The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 64, Temporary Common Worker Employers. This review is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by Texas Government Code, §2001.039, any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P.O. Box 12157, Austin, Texas 78711, facsimile-(512) 475-3032, or by e-mail, caroline.jackson@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

16 TAC §64.1. Authority

16 TAC §64.10. Definitions

16 TAC §64.20. Licensing Requirements General

16 TAC §64.60. Powers and duties of the Department and Executive Director

16 TAC §64.70. Rights and Duties of a License Holder

16 TAC §64.71. Other Duties of License Holder

16 TAC §64.72. Additional Provisions for Labor Halls

16 TAC §64.80. Fees

TRD-200501843

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: May 6, 2005



The Texas Department of Licensing and Regulation (Department) files this notice of intent to review and consider for re-adoption, revision, or repeal, Title 16, Texas Administrative Code, Chapter 78, Talent Agencies. This review is being conducted in accordance with the requirements of Texas Government Code, §2001.039.

An assessment will be made by the Department as to whether the reasons for adopting or readopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Department.

As required by Texas Government Code, §2001.039, any questions or written comments pertaining to this rule review may be submitted to Caroline Jackson, Legal Assistant, General Counsel's Office, P. O. Box 12157, Austin, Texas 78711, facsimile-(512) 475-3032, or by e-mail, caroline.jackson@license.state.tx.us. The deadline for comments is thirty days after publication in the *Texas Register*.

Proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register*. The proposed rules will be open for public comment prior to final adoption or repeal by the Department, in accordance with the requirements of the Administrative Procedure Act, Texas Government Code, Chapter 2001.

16 TAC §78.1. Authority

16 TAC §78.10. Definitions

16 TAC §78.20. Registration Requirements--General

16 TAC §78.21. Registration Requirements--New Certificates

16 TAC §78.22. Registration Requirements--Renewal

16 TAC §78.30. Exemptions

16 TAC §78.40. Security Requirements

16 TAC §78.70. Responsibilities of the Registrant--General

16 TAC §78.71. Responsibilities of the Registrant--Schedules of Commissions and Fees

16 TAC §78.72. Responsibilities of Registrant--Treatment of Monies

16 TAC §78.73. Responsibilities of the Registrant--Financial Record-keeping

16 TAC §78.74. Responsibilities of the Registrant--Registration Statement

16 TAC §78.75. Responsibilities of the Registrant--Prohibited Acts

16 TAC §78.80. Fees--Original Registration and Renewal

16 TAC §78.82. Fees--Updated or Duplicate Registration

16 TAC §78.90. Sanctions--Administrative Sanctions/Penalties

16 TAC §78.100. Technical Requirements

TRD-200501844

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Filed: May 6, 2005



Texas Workers' Compensation Commission

Title 28, Part 2

The Texas Workers' Compensation Commission files this notice of intention to review the rules contained in Chapter 166 concerning Workers Health & Safety-Accident Prevention Services. This review is pursuant to the General Appropriations Act, Article IX, § 167, 75th Legislature, the General Appropriations Act, Section 9-10, 76th Legislature, and Texas Government Code §2001.039 as added by SB-178, 76th Legislature.

The agency's reason for adopting the following rules contained in this chapter continues to exist and it proposes to readopt these rules:

§166.1. Definitions of Terms.

§166.2. Initial Writing and Resumption of Writing of Workers' Compensation Insurance.

§166.3. Annual Report to the Commission.

§166.4. Required Accident Prevention Services.

§166.5. Required Periodic Inspections of Accident Prevention Services and Site of Inspection.

§166.6. Exchange of Information for the Inspection.

§166.7. Inspection of Accident Prevention Services: Conducting and Reporting.

§166.8. Qualification of Field Safety Representatives.

§166.9. Approval of Occupational Health and Safety Education Programs.

Comments regarding whether the reason for adopting these rules continues to exist must be received by 5:00 p.m. on June 20, 2005 and submitted to Kristi Dowding, Legal Services, MS 4-D, Texas Workers' Compensation Commission, 7551 Metro Center Drive, Suite 100, MS-4D, Austin, Texas 78744-1609.

TRD-200501882

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: May 10, 2005



TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word “Figure” followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

TEXAS DEPARTMENT OF PUBLIC SAFETY
AMBER ALERT REQUEST FORM

Fax (512) 424-2281 or (512) 451-2291; and Call (512) 424-2277 or 2208

MAXIMUM ACTIVATION - 24 HOURS

Reporting Agency Information	YES	NO	
Name of Reporting Agency	<input type="checkbox"/>	<input type="checkbox"/>	1. Is this child 17 years of age or younger?
Name/Title of Investigating Officer	<input type="checkbox"/>	<input type="checkbox"/>	2. Does the law enforcement agency believe that the child has been abducted, that is, unwillingly taken from their environment without permission from the child's parent or legal guardian or by the child's parent or legal guardian who commits an act of murder or attempted murder during the time of the abduction?
Contact number for Investigating Officer	<input type="checkbox"/>	<input type="checkbox"/>	3. Is there reason to believe that the victim is in immediate danger of serious bodily harm or death?
Fax number for reporting agency	<input type="checkbox"/>	<input type="checkbox"/>	4. Is it confirmed that an investigation has taken place that verifies the abduction and has eliminated alternative explanations for the missing child?
Authentication password	<input type="checkbox"/>	<input type="checkbox"/>	5. Is there sufficient information available to disseminate to the public that could assist in locating the child, suspect, or vehicle used in the abduction?

❖ **IMPORTANT:** Do **NOT** send AMBER ALERT if the answer is **NO** to **ANY** of these questions. If activated, your request is only valid for a period of 24 hours. You will be contacted after 12 hours, 18 hours, and 23 hours in which you may decide to request an extension. All requests for extension must be accomplished on or before the last 23 hour reminder from the State Operations Center. Contact (512) 424-2277 or 2208 for all requests for extensions.

Abduction Date: _____ Time: _____

Last known location: _____

VICTIM DATA:

Name: _____

Age: _____ Weight: _____ Height: _____ Race: _____ Sex: _____ Eyes: _____

DOB: _____ Hair: _____ Clothing: _____

Unique Physical Characteristics: _____

SUSPECT DATA:

Name: _____

Age: _____ Weight: _____ Height: _____ Race: _____ Sex: _____ Eyes: _____

DOB: _____ Hair: _____ Clothing: _____

Unique Physical Characteristics: _____

VEHICLE DATA:

Make: _____ Model: _____ Year: _____ Color: _____

LP-State: _____ Number: _____

Any other descriptors: _____

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Texas Department of Agriculture

Notice of Request for Applications--Texas Yes! Rural Travel Guide Program

The Rural Economic Development Division (REDD) of the Texas Department of Agriculture (TDA) hereby requests applications from communities for the Texas Yes! Rural Travel Guide program for the period of June 1, 2005, through August 1, 2005. For program information, guidelines and applications contact Robert Wood, Assistant Commissioner for Rural Economic Development. Mr. Wood may be contacted by telephone in Austin at (512) 936-0273 or Toll free at (877) 428-7848, by fax at (888) 216-9867, or by e-mail at finance@agr.state.tx.us. Information may also be accessed by visiting the Web site at http://www.agr.state.tx.us/eco/rural_eco_devo/economic_development/fin_ruraltourism.htm.

Definitions.

"Texas Yes! Rural Travel Guide program"--a one-time matching funds program developed to assist rural regions in promoting and developing a Rural Travel Guide to educate travelers about the region's history and culture and to promote leisure and business travel. The Rural Travel Guide may take the form of: (i) a printed guide, and/or (ii) an electronic guide, and/or (iii) a Web site.

"Applicant"--a city or county government, a government sponsored entity (i.e. chamber of commerce or economic development corporation), or a non-profit organization with a tourism, economic development or natural resource conservation focus, and is a Texas Yes! member.

"Participating Community"--a city or county uniting with the Applicant to promote regional rural tourism.

Eligibility. To be eligible for participation in the Texas Yes! Rural Travel Guide program, the Applicant must be a Texas Yes! member and be in good standing with TDA. The Applicant will be the sole contact for the application and reimbursement and the sole contact between the Participating Communities and TDA. The Applicant will be responsible for providing the required application information and for the accuracy of the reimbursement requests.

Proposal Requirements. To apply for the Texas Yes! Rural Travel Guide program, the Applicant must: (i) submit a fully completed and signed Texas Yes! Rural Travel Guide application; (ii) complete the Rural Travel Guide score sheet; (iii) submit a Proposed Budget; (iv) submit a signed original Resolution for each Participating Community; and (v) submit a signed Texas Yes! Rural Travel Guide program Acknowledgement of Reading and Understanding Program Guidelines form. The Applicant will notify TDA of any change in the status of the project. A maximum amount awarded per application is \$15,000. The minimum amount awarded is \$1,000. Total funds available for all awards are \$150,000. The initial deadline for submission of applications is August 1, 2005, or until funds are depleted, whichever comes first. To be eligible, an Applicant must score no less than 35 points. Applications will be reviewed in the order received. In the event of a tie score, the tying applications will be ranked from lowest to highest based on the most recently available average county poverty rate from

the Participating Communities. Preference will be given to the application with the higher average poverty rate.

All approved projects must not begin until the contract is signed and must be completed within six months from the date the contract is signed. All approved projects will be subject to audit and periodic reporting requirements. To receive reimbursements timely, all reimbursement requests must be received as described in the Texas Yes! Rural Travel Guide program guidelines.

Only applications that further or enhance a rural region as a travel destination and are submitted by Applicants physically located in rural Texas will be considered. TDA reserves the right to terminate any award if it determines, in its sole discretion, that a project does not further or enhance the goals of the Rural Travel Guide program and Texas Yes!.

Proposals should be submitted to Robert Wood, Assistant Commissioner for Rural Economic Development, Texas Department of Agriculture, 1700 North Congress Avenue, 11th Floor, Austin, Texas 78701.

TRD-200501910

Dolores Alvarado Hibbs

Deputy General Counsel

Texas Department of Agriculture

Filed: May 11, 2005

Texas Building and Procurement Commission

Request for Proposals

The Texas Building and Procurement Commission (TBPC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), announces the issuance of **Request for Proposals (RFP) # 303-5-11013**. TBPC seeks a **five (5) year lease** of approximately **5,751 square feet of office space** in the Amarillo area, Potter and Randall Counties, Texas.

The deadline for questions is May 24, 2005 and the deadline for proposals is May 31, 2005 at 3:00 P.M. The anticipated award date is June 15, 2005. TBPC reserves the right to accept or reject any or all proposals submitted. TBPC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of a RFP. Neither this notice nor the RFP commits TBPC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting TBPC Purchaser Kenneth Ming at (512) 463-2743. A copy of the RFP may be downloaded from the Electronic State Business Daily at http://esbd.tbpc.state.tx.us/1380/bid_show.cfm?bidid=58877

TRD-200501875

Kenneth Ming

Purchaser

Texas Building and Procurement Commission

Filed: May 9, 2005

Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of April 29, 2005, through May 5, 2005. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period for these activities extends 30 days from the date published on the Coastal Coordination Council web site. The notice was published on the web site on May 11, 2005. The public comment period for these projects will close at 5:00 p.m. on June 10, 2005.

FEDERAL AGENCY ACTIONS:

Applicant: Ken Armstrong; Location: The project is located in Dickinson Bayou at an approximate 5-acre tract along Calvert Lane, in Dickinson, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Dickinson, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 304278; Northing: 3260160. Project Description: The applicant proposes to conduct dredging and construct a bulkhead, boat house, and boat slip. The 287-foot bulkhead will be constructed at the existing shoreline at the mean high tide line. The bulkhead is authorized under Nationwide Permit (NWP) 13 (D-17188). A 20-foot by 15-foot boat ramp will be constructed resulting in 11 cubic yards of concrete discharged into Dickinson Bayou. The boat ramp is authorized under NWP 36. The applicant also proposes to excavate 994 cubic yards of material from the bayou to achieve a depth of -4 feet mean low tide for boat access. The proposed structure is approximately 1,220 square feet consisting of a covered boathouse and a 300-square-foot deck. CCC Project No.: 05-02578-F1; Type of Application: U.S.A.C.E. permit application #23730 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Neumin Production Company; Location: The project is located in Lavaca Bay, in State Tracts (ST's) 27 and 28, Calhoun County. The project can be located on the U.S.G.S. quadrangle map entitled: Port Lavaca East, Texas. Approximate UTM Coordinated in NAD 27 (meters): Zone 14; Easting: 740949; Northing: 3167644. Project Description: The applicant proposes to install, operate, and maintain structures and equipment necessary for oil and gas drilling, production, and transportation activities for the proposed ST 27 Well No. 1. Such activities include installation of typical marine barges and keyways, production structures with attendant facilities, and flowlines. The project includes the installation of 1,831 feet of 2.5-inch diameter flowline to a depth of -3 feet beneath the bay bottom by jetting and/or plowing, and discharging approximately 418 cubic yards of material. Water depths in the project area are -7 to -8 feet MHW. CCC Project No.: 05-0258-F1; Type of Application: U.S.A.C.E. permit application #23740 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Seabrook Marina, Inc.; Location: The project is located at the Seabrook Marina, in the Clear Creek Channel, Harris County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: League City, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 15; Easting: 303541; Northing: 3270704. Project

Description: The applicant proposes to construct two floating piers for the mooring of vessels at the marina. The first structure will be parallel to the shoreline and a total of 260 feet by 8 feet. The depth of the water is approximately -9.0 feet below the pier. The pier will be 130 feet from the centerline of the channel. The second structure will extend out from the shoreline and consist of an 8-foot wide T-head pier with four, 4-foot finger piers. The structure will be 108 feet across and extend out 70 feet from the shoreline. The second pier will be located in water from 9 to 12 feet deep and located 140 feet from the centerline of the channel. CCC Project No.: 05-0259-F1; Type of Application: U.S.A.C.E. permit application #23711 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Applicant: Gulf Marine Fabricators; Location: The project is located in Corpus Christi Bay at the applicant's facility at 248 Farm-to-Market Road 1069, in Ingleside, San Patricio County. The project can be located on the U.S.G.S. quadrangle map entitled: Port Ingleside, Texas. Approximate UTM Coordinates in NAD 27 (meters): Zone 14; Easting: 677950; Northing: 3078750. Project Description: The applicant proposes to construct a skidway within their property to be used during the building of a cell spar for an oil and gas exploration rig. When the construction of the spar is complete, the skidway will be flooded and the completed spar moved through the skidway and out into Corpus Christi Bay. Construction of the skidway will require the mechanical excavation of approximately 85,000 cubic yards of material that would be placed in the applicant's on-site placement area. The project would also require the deepening of a portion of Corpus Christi Bay near the Corpus Christi Ship Channel (CCSC). Approximately 250,000 cubic yards of material would be hydraulically dredged from an area measuring 936 feet in length and varying in width from 200 feet to 576 feet. This area would be dredged to a final depth of -35 feet mean low tide. A part of the dredging would be done approximately 120 feet to the north of the CCSC, but no dredging would occur within the CCSC. The dredged material would be placed on the applicant's on-site placement area. CCC Project No.: 05-0260-F1; Type of Application: U.S.A.C.E. permit application #2175(08) is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Coastal Coordination Council for review.

Further information on the applications listed above may be obtained from Tammy Brooks, Program Specialist, Coastal Coordination Council, P.O. Box 12873, Austin, Texas 78711-2873, or tammy.brooks@glo.state.tx.us. Comments should be sent to Ms. Brooks at the above address or by fax at (512) 475-0680.

TRD-200501893

Larry L. Laine

Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council

Filed: May 10, 2005

Office of Consumer Credit Commissioner

Notice of Rate Bracket Adjustment

The Consumer Credit Commissioner of Texas has ascertained the following brackets and ceilings by use of the formula and method described in TEX. FIN. CODE §341.203.¹

The amounts of brackets in TEX. FIN. CODE §342.201(a) are changed to \$1,620.00 and \$13,500.00, respectively.

The amounts of brackets in TEX. FIN. CODE §342.201(e) are changed to \$2,700.00, \$5,670.00, and \$13,500.00, respectively.

The ceiling amount in TEX. FIN. CODE §342.251 is changed to \$540.00.

The amounts of the brackets in TEX. FIN. CODE §345.055 are changed to \$2,700.00 and \$5,400.00, respectively.

The amounts of the bracket in TEX. FIN. CODE §345.103 is changed to \$2,700.00.

The ceiling amount of TEX. FIN. CODE §371.158 is changed to \$13,500.00.

The amounts of the brackets in TEX. FIN. CODE §371.159 are changed to \$162.00, \$1,080.00, and \$1,620.00, respectively.

The above dollar amounts of the brackets and ceilings shall govern all applicable credit transactions and loans made on or after July 1, 2005, and extending through June 30, 2006.

¹ Computation method: The Reference Base Index (the Index for December 1967) = 101.6. The December 2004 Index = 554.2. The percentage of change is 545.47%. This equates to an increase of 540% after disregarding the percentage of change in excess of multiples of 10%.

TRD-200501877
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 9, 2005



Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in Sections 303.003 and 303.009, Tex. Fin. Code.

The weekly ceiling as prescribed by Sections 303.003 and 303.009 for the period of 05/16/05 - 05/22/05 is 18% for Consumer¹/Agricultural/Commercial²/credit thru \$250,000.

The weekly ceiling as prescribed by Sections 303.003 and 303.09 for the period of 05/16/05 - 05/22/05 is 18% for Commercial over \$250,000.

¹ Credit for personal, family or household use.

² Credit for business, commercial, investment or other similar purpose.

TRD-200501878
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 9, 2005



Texas Education Agency

Public Notice Announcing the Availability of the Proposed Texas Individuals with Disabilities Education Act (IDEA) Eligibility Document: State Policies and Procedures

Purpose and scope of the Part B Federal Fiscal Year (FFY) 2005 State Application and its relation to Part B of the Individuals with Disabilities

Education Improvement Act (IDEA). As a result of the 2004 amendments to the IDEA, all states must ensure that the state has on file with the Secretary of the U.S. Department of Education assurances that the state meets or will meet all of the eligibility requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446. A state may do this by one of the following methods: (1) providing assurances in the Part B FFY 2005 State Application that it has in effect policies and procedures to meet the requirements of Part B of the IDEA as amended in 2004 by Public Law 108-446; (2) providing assurances in the State Application that the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations and make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of IDEA, as amended, as soon as possible and not later than July 1, 2006; or (3) submitting modifications to state policies and procedures previously submitted to the U.S. Department of Education.

Based on the extensive changes to the IDEA, the State of Texas (Texas Education Agency) has chosen to submit a State Application providing assurances the state will operate consistent with all the requirements of Public Law 108-446 and applicable regulations and make such changes to existing policies and procedures as are necessary to bring those policies and procedures into compliance with the requirements of IDEA, as amended, as soon as possible and not later than July 1, 2006.

Availability of the State Application. The Proposed State Application is available on the Texas Education Agency (TEA) Special Education web page at <http://www.tea.state.tx.us/special.ed/stplan/index.html>. The Proposed State Application document may be reviewed and/or downloaded from this web page address. In addition, instructions for submitting public comments are also available from the same site. The Proposed State Application document will also be available at the TEA, Library (Ground Floor), 1701 North Congress Ave., Austin, Texas 78701. Parties interested in reviewing the Proposed State Application should contact the Division of IDEA Coordination at (512) 463-9414.

Procedures for submitting written comments about the Proposed State Application. The TEA will accept written comments pertaining to the Proposed State Application by mail to Gene Lenz, TEA, Division of IDEA Coordination, 1701 North Congress Ave., Austin, Texas 78701-1494 or by e-mail to sped@tea.state.tx.us.

Timetable for submitting the Annual State Application under Part B of the Individuals with Disabilities Education Act as Amended in 2004 for FFY 2005 to the Secretary of Education for approval. After review and consideration of all public comments, the TEA will make necessary/appropriate modifications and will submit the State Application on or before July 1, 2005.

Further Information. For more information, contact the TEA Division of IDEA Coordination, Room 6-127, 1701 North Congress Avenue, Austin, Texas 78701; by telephone at (512) 463-9414; by fax at (512) 463-9560; or by e-mail at sped@tea.state.tx.us.

TRD-200501907
Cristina De La Fuente-Valadez
Director, Policy Coordination Division
Texas Education Agency
Filed: May 11, 2005



Texas Commission on Environmental Quality

Enforcement Orders

An agreed order was entered regarding Motheral Printing Company, Docket No. 2003-1222-AIR-E on April 29, 2005 assessing \$11,155 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at 817-588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Dan Mauldin dba Travis Equipment Company, Docket No. 2003-0241-AIR-E on April 29, 2005 assessing \$2,700 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Staff Attorney at 512-239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Canyon Lake Water Supply Corporation, Docket No. 2003-0532-MLM-E on April 29, 2005 assessing \$7,395.50 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Becky Petty, Staff Attorney at 512-239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Comanche, Docket No. 2003-1407-MWD-E on April 29, 2005 assessing \$4,640 in administrative penalties with \$928 deferred.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361-825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Pak Tex Group, Inc., Docket No. 2003-0894-PST-E on April 29, 2005 assessing \$2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at 903-535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Galveston, Docket No. 2003-0924-PST-E on April 29, 2005 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lori Thompson, Enforcement Coordinator at 903-535-5116, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Pete Maldonado, Docket No. 2003-0026-MSW-E on May 6, 2005 assessing \$3,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Deborah Bynum, Staff Attorney at 512-239-1976, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding US Department Of The Army, Fort Hood, Docket No. 2003-0144-IWD-E on April 29, 2005 assessing \$2,365 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Gitanjali Yadav, Staff Attorney at 512-239-2029, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Maurice Lozano, Docket No. 2004-0088-OSS-E on April 29, 2005 assessing \$788 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Staff Attorney at 512-239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Larry Gossett dba Oaks Mobile Home Park, Docket No. 2004-0239-PWS-E on April 29, 2005 assessing \$250 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Watson, Staff Attorney at 512-239-2044, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Prince Shahzad, Inc. dba Prince Country Store, Docket No. 2004-0405-PST-E on April 29, 2005 assessing \$13,500 in administrative penalties with \$2,700 deferred.

Information concerning any aspect of this order may be obtained by contacting Trina Grieco, Enforcement Coordinator at 210-403-4006, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding C. T. Chien dba Walnut Creek Mobile Home Park, Docket No. 2004-0568-PWS-E on April 29, 2005 assessing \$6,018 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at 512-239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Meng Taing dba Drive In Grocery, Docket No. 2004-0574-PST-E on April 29, 2005 assessing \$1,070 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Barbara Klein, Staff Attorney at 512-239-1320, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was entered regarding Octavio Benitez dba El Paso General Recycling, Docket No. 2004-0582-MSW-E on April 29, 2005 assessing \$6,420 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sarah Utley, Staff Attorney at 512-239-0575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jeld-Wen, Inc., Docket No. 2004-0619-AIR-E on April 29, 2005 assessing \$3,000 in administrative penalties with \$600 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432-620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding North American Recovery Services, Inc., Docket No. 2004-0710-MSW-E on April 29, 2005 assessing \$7,500 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Benjamin de Leon, Staff Attorney at 512-239-6939, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Cooper Concrete Company, Docket No. 2004-0760-WQ-E on April 29, 2005 assessing \$5,000 in administrative penalties with \$1,000 deferred.

Information concerning any aspect of this order may be obtained by contacting David Van Soest, Enforcement Coordinator at 512-239-0468, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding The Goodyear Tire & Rubber Company dba Goodyear Tire & Rubber Beaumont Chemical Plant, Docket No. 2004-0802-AIR-E on April 29, 2005 assessing \$95,585 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting John Barry, Enforcement Coordinator at 409-899-8781, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mayfair 5 Water Company, Docket No. 2004-0853-PWS-E on April 29, 2005 assessing \$300 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jeffrey Huhn, Staff Attorney at 512-239-5111, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Andrews Transport, Inc., Docket No. 2004-0914-PST-E on April 29, 2005 assessing \$1,800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jill Reed, Enforcement Coordinator at 432-620-6132, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Bryson, Docket No. 2004-0935-PWS-E on April 29, 2005 assessing \$1,365 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Audra Ruble, Enforcement Coordinator at 361-825-3126, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Pflugerville, Docket No. 2004-0949-MLM-E on April 29, 2005.

Information concerning any aspect of this order may be obtained by contacting Laurie Eaves, Enforcement Coordinator at 512-239-4495, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MEMC Pasadena, Inc., Docket No. 2004-0985-AIR-E on April 29, 2005 assessing \$2,875 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Cari Bing, Enforcement Coordinator at 512-239-1445, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Khun Heng dba Billys Beer & Wine, Docket No. 2004-1007-PST-E on April 29, 2005 assessing \$1,050 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at 817-588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Crest Water Company, Docket No. 2004-1014-PWS-E on April 29, 2005 assessing \$210 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ruben Soto, Enforcement Coordinator at 512-239-4571, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding A.C.S.S. Dallas Industrial, Inc., Docket No. 2004-1022-PST-E on April 29, 2005 assessing \$2,800 in administrative penalties with \$560 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at 817-588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Little River Materials, Inc., Docket No. 2004-1075-WQ-E on April 29, 2005 assessing \$10,000 in administrative penalties with \$2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Justin Lannen, Staff Attorney at 817-588-5927, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atofina Petrochemicals, Inc., Docket No. 2004-1080-AIR-E on April 29, 2005 assessing \$3,175 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at 713-422-8931, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mission Consolidated Independent School District, Docket No. 2004-1125-MWD-E on April 29, 2005 assessing \$2,200 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michael Meyer, Enforcement Coordinator at 512-239-4492, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Hilco United Services, Inc. dba Arrowhead Water System, Docket No. 2004-1190-PWS-E on April 29, 2005 assessing \$683 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Clausewitz, Enforcement Coordinator at 210-403-4012, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding J.D. Grewal, Inc. dba Spin N Market 7, Docket No. 2004-1227-PST-E on April 29, 2005 assessing \$2,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Mary Lyons, Staff Attorney at 512-239-6996, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Praxair, Inc., Docket No. 2004-1230-IWD-E on April 29, 2005 assessing \$2,440 in administrative penalties with \$488 deferred.

Information concerning any aspect of this order may be obtained by contacting Catherine Albrecht, Enforcement Coordinator at 713-767-3672, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Suman Enterprises, Inc. dba JR Food Store, Docket No. 2004-1247-PST-E on April 29, 2005 assessing \$4,800 in administrative penalties with \$960 deferred.

Information concerning any aspect of this order may be obtained by contacting Lawrence King, Enforcement Coordinator at 512-239-7037, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kennard, Docket No. 2004-1259-MWD-E on April 29, 2005 assessing \$5,100 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Edward Moderow, Enforcement Coordinator at 512-239-2680, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Atlas Roofing Corporation, Docket No. 2004-1333-AIR-E on May 6, 2005 assessing \$28,800 in administrative penalties with \$5,760 deferred.

Information concerning any aspect of this order may be obtained by contacting Daniel Siringi, Enforcement Coordinator at 409-899-8799, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jeannie Simpson dba Jumpin Jack's, Docket No. 2004-1337-PST-E on April 29, 2005 assessing \$1,600 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Chris Friesenhahn, Enforcement Coordinator at 210-403-4077, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leyendecker Construction, Inc., Docket No. 2004-1447-PST-E on April 29, 2005 assessing \$800 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Mac Vilas, Enforcement Coordinator at 512-239-2557, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A order affirming and renewing an Emergency Order was entered regarding Bailey Ray Hawley dba Hawley's Wastewater Treatment Facility, Docket No. 2004-1466-MWD-E on April 29, 2005.

Information concerning any aspect of this order may be obtained by contacting Becky Petty, Staff Attorney at 512-239-3693, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-200501902

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 11, 2005



Notice of District Petition

Notice mailed May 10, 2005

TCEQ Docket No. 2004-1590-DIS; The Texas Commission on Environmental Quality (TCEQ) will conduct a hearing on an application for dissolution (Application) of North Harris County Municipal Utility District No. 1 (District). The Application was filed with the TCEQ by C. Travis Traylor, Jr., (Applicant), being an owner of property located within the District. The TCEQ will conduct this hearing under

the authority of Chapters 49 and 54 of the Texas Water Code, Title 30, Chapter 293 of the Texas Administrative Code and the procedural rules of the TCEQ.

The TCEQ will conduct the hearing at 9:30 a.m., Wednesday, July 27, 2005, Building E, Room 201S, 12100 Park 35 Circle, Austin, Texas.

On July 7, 1980, the Texas Water Commission created the District. The District operates under Texas Water Code Chapters 49 and 54 as a municipal utility district. The petition filed with the Application states that dissolution is desirable or necessary because the District has been dormant and provided no services to landowners in the District. The petition filed with the Application states that the District: (1) has performed none of the functions for which it was created for five consecutive years preceding the date of the Application, (2) is financially dormant, and (3) has no outstanding bonded indebtedness. An affidavit from the State Comptroller of Public Accounts has been included in the Application, certifying that the District has no bonded indebtedness. If the request for dissolution is approved, the District's assets, if any, will escheat to the State of Texas and will be administered by the State Comptroller of Public Accounts and disposed of in the manner provided by Chapter 74 of the Texas Property Code.

The TCEQ may grant a contested case hearing on this Application if a written hearing request is filed within 30 days after the newspaper publication of this notice. The TCEQ may approve the Application unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice.

To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Applicant and the TCEQ Docket Number; (3) the statement "I/we request a contested case hearing"; and (4) a brief description of how you would be affected by the request in a way uncommon to the general public. You may also submit your proposed adjustments to the Application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court.

Written hearing requests should be submitted to the TCEQ Office of the Chief Clerk, MC 105, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, contact the TCEQ Public Interest Counsel, MC 103, the same address. For additional information, individual members of the general public may contact the TCEQ Office of Public Assistance, at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

Persons with disabilities who plan to attend this hearing and who need special accommodations at the hearing should call the TCEQ Office of Public Assistance at 1-800-687-4040 or 1-800-RELAY-TX (TDD), at least one week prior to the hearing.

TRD-200501901

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 11, 2005



Notice of Meeting on June 23, 2005, in Mount Pleasant, Texas Concerning the Dorchester Refining Company Site

The purpose of the meeting is to obtain public input and information concerning the proposal of the Dorchester Refining Company site to

the state registry of Superfund sites, the identification of potentially responsible parties, and the proposal of non-residential land use.

The Texas Commission on Environmental Quality (TCEQ or commission) is required under the Texas Solid Waste Disposal Act, Health and Safety Code (the Act), Chapter 361, as amended to annually publish a state registry that identifies facilities that may constitute an imminent and substantial endangerment to public health and safety or the environment due to a release or threatened release of hazardous substances into the environment. The most recent registry listing of these facilities was published in the September 24, 2004, issue of the *Texas Register* (29 TexReg 3278).

In accordance with the Act, §361.184(a), the commission must publish a notice of intent to list a facility on the state registry of state Superfund sites in the *Texas Register* and in a newspaper of general circulation in the county in which the Dorchester Refining Company site (the site) is located. The commission hereby gives notice that the commission's executive director has determined the Dorchester Refining Company site to be eligible for listing, and that the executive director proposes to list the site on the state registry. The commission also gives notice in accordance with the Act, §361.1855, that it proposes a land use other than residential as appropriate for the site. The commission proposes a commercial/industrial land use designation. Determination of appropriate land use may impact the remedial investigation and remedial action for the site. The TCEQ is proposing a land use designation of commercial/industrial based on the existing use of the property, as prescribed in the Texas Risk Reduction Program rule (30 TAC §350.53).

This notice also explains the general nature of the potential endangerment to public health and safety or the environment as determined by information currently available to the executive director. This notice of intent to list the Dorchester Refining Company site was also published on May 20, 2005, in the *Mount Pleasant Daily Tribune*.

The site is located at the 1700 Block of West First Street, Mount Pleasant, Titus County, Texas. The geographic coordinates of the site are Latitude 33 degrees 09 seconds 15 seconds north and Longitude 94 degrees 59 seconds 15 seconds west. The description of the site is based on information available at the time the site was evaluated with the Hazard Ranking System (HRS). The HRS is the principal screening guide used by the commission to evaluate potential, and relative risk to public health and the environment from releases or threatened releases of hazardous substances. The site description may change as additional information is gathered on the sources and extent of contamination.

The site covers approximately 130 acres and is west of Mount Pleasant, on the south side of the 1700 Block of West First Street. The site was actively refining gasoline, diesel, and asphalt products from 1936 to 1984. In July of 1998, the TCEQ conducted a soil sampling at the site. Observed releases of pyrene, chrysene, benzo(b&k)fluoranthene, benzo(a)pyrene, indeno(1,2,3-cd)pyrene, benzo(g,h,i)perylene, cadmium, chromium, lead, and mercury were detected on site at levels greater than three times background concentrations. In October 2002, TCEQ conducted a sediment sampling event to document an observed release of hazardous substances into Tankersley Creek. Releases into the creek of cadmium, chromium, and lead were documented.

Currently on site are refinery office and operation buildings as well as the refinery infrastructure and storage facilities. Waste materials on site appear to include gas/oil sludge, asphalt tank bottoms, asphalt, heat exchanger bundle sludge, API separator sludge, and slop oil.

A public meeting will be held on June 23, 2005, at 7:00 p.m., in the Walnut Room of the Mount Pleasant Civic Center located at 1800 N. Jefferson Avenue in Mount Pleasant. The purpose of this meeting is

to obtain additional information regarding the site's eligibility for listing on the state registry, obtain additional information regarding potentially responsible parties, and obtain public input and information regarding the appropriate use of land on which the site is located. The public meeting will be legislative in nature and not a contested case hearing under the Texas Administrative Procedure Act (Texas Government Code, Chapter 2001).

All persons desiring to make comments may do so prior to or at the public meeting. All comments submitted prior to the public meeting must be received by 5:00 p.m., June 23, 2005, and should be sent in writing to Carol Boucher, Project Manager, Texas Commission on Environmental Quality, Remediation Division, MC 143, P.O. Box 13087, Austin, Texas 78711-3087, or by facsimile to (512) 239-2450. The public comment period for this action will end at the close of the public meeting on June 23, 2005.

A portion of the records for this site, including documents pertinent to the executive director's determination of eligibility, is available for review during regular business hours at Mount Pleasant Public Library, 213 North Madison, Mount Pleasant, Texas, (903) 575-4181. Copies of the complete public record file may be obtained during regular business hours at the commission's Records Management Center, Records Customer Service, Building E, First Floor, 12100 Park 35 Circle, Austin, Texas 78753, (800) 633-9363 or (512) 239-2920. Photocopying of file information is subject to payment of a fee. Parking for persons with disabilities is available on the east side of Building D, convenient to access ramps that are between Buildings D and E.

Information is also available regarding the state Superfund program on the commission's Web site at www.tmrcc.state.tx.us/permitting/remed/superfund/index.html. Persons with disabilities who have special communication or other accommodation needs who are planning to attend the meeting should contact the agency at (800) 633-9363 or (512) 239-2463. Requests should be made as far in advance as possible.

For further information about this site or the public meeting, please call Michael Hoffman, TCEQ Community Relations, at (800) 633-9363, extension 6162.

TRD-200501905

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 11, 2005



Notice of Municipal Solid Waste Landfill General Operating Permit Issuance

Notice is hereby given that the executive director (ED) of the Texas Commission on Environmental Quality (TCEQ) has issued renewal of the Municipal Solid Waste Landfill general operating permit (MSWL GOP) under the requirements of 30 TAC Chapter 122, Subchapter F (concerning General Operating Permits) on May 19, 2005.

The MSWL GOP is available for use by the owners or operators of major source sites (sites) or nonmajor sites subject to the operating permits program. The MSWL GOP provides an alternate permitting mechanism for sites subject to Chapter 122, consistent with Title 40 Code of Federal Regulations Part 70 requirements that authorize the operation of multiple sites that are similar in terms of operations, processes, and emissions.

Beginning on May 20, 2005, the MSWL GOP is subject to public petition for 60 days as specified under 30 TAC §122.360. Comments

should be received by July 19, 2005. Any person affected by the decision of the ED to issue the MSWL GOP may petition the United States Environmental Protection Agency (EPA) to make an objection. Petitions shall be based only on objections to the MSWL GOP that were raised with reasonable specificity during the public comment period, unless the petitioner demonstrates in the petition to the EPA, that it was not possible to raise the objections within the public comment period. The petition shall identify all objections. A copy of the petition shall be provided to the ED by the petitioner. The ED shall have 90 days from the receipt of an EPA objection to resolve any objection and, if necessary, terminate or revise the MSWL GOP. Public petitions should be submitted to the TCEQ and the EPA at the following addresses: Texas Commission on Environmental Quality, Mr. Richard Hyde, P.E., Director, Air Permits Division (MC 163), P.O. Box 13087, Austin, Texas 78711-3087; U.S. Environmental Protection Agency, Air Permit Section Chief, Region 6, 1445 Ross Avenue, Suite 1200, Dallas, Texas 75202-2733; and the U.S. Environmental Protection Agency, Administrator Steve Johnson, Ariel Rios Building (AR 1101A), 1200 Pennsylvania Avenue, NW, Washington, DC 20460.

Copies of the MSWL GOP and final technical summary may be obtained from the TCEQ Web site at <http://www.tnrcc.state.tx.us/permitting/airperm/opd/permtabl.htm> or by contacting the TCEQ Air Permits Division at (512) 239-1250. For further information or questions concerning the MSWL GOP, contact Phil Harwell, Office of Permitting, Remediation & Registration, Air Permits Division, (512) 239-1517.

TRD-200501897

Stephanie Bergeron Perdue

Director, Environmental Law Division

Texas Commission on Environmental Quality

Filed: May 10, 2005



Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; and the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 20, 2005**. The commission will consider any written comments received and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate a proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and

must be **received by 5:00 p.m. on June 20, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, comments on the DOs should be submitted to the commission in **writing**.

(1) COMPANY: Dhanani Investments, Inc. dba Yale Shamrock; DOCKET NUMBER: 2004-0369- PST-E; TCEQ ID NUMBERS: 33094 and RN103160743; LOCATION: 202 West Crosstimbers, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.48(c), by failing to conduct inventory control at the station; 30 TAC §334.50(b)(1)(A) and (2), and (d)(1)(B)(ii), and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks (USTs) in a manner which would detect a release at a frequency of at least once every month, failing to conduct monthly reconciliation of inventory control records as required in conjunction with automatic tank gauging, and failing to perform a tightness test for pressurized piping at least once per year; 30 TAC §334.8(c)(4)(B) and §334.7(a)(1), and TWC, §26.346(a), by failing to ensure that its UST registration and self-certification form was fully and accurately completed and submitted to the agency in a timely manner; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.10(b), by failing to make records available for a UST inspection; 30 TAC §334.6(b)(2)(A) and (C), by failing to provide written notice at least 30 days prior to initiating a major UST construction activity and failing to confirm the activity with the appropriate regional office within 24 - 72 hours before initiating construction; and 30 TAC §334.22(a), by failing to pay all outstanding UST fees; PENALTY: \$24,500; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Timothy Allen Townley; DOCKET NUMBER: 2004-1738-OSS-E; TCEQ ID NUMBERS: OS0015434 and RN103423273; LOCATION: 1240 Honeybee Street, Vidor, Orange County, Texas; TYPE OF FACILITY: on-site sewage installation business; RULES VIOLATED: 30 TAC §285.32(a)(3) and Texas Health and Safety Code (THSC), §366.004, by failing to install a system with the required slope of 1/8-inch per foot on the sewer pipe from the house stub out to the first tank; and 30 TAC §285.3(d)(6) and THSC, §366.004, by failing to submit a reinspection fee prior to the reinspection of the system; PENALTY: \$525; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-200501884

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 10, 2005



Notice of Opportunity to Comment on Settlement Agreements of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. Section 7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. Section

7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 20, 2005**. Section 7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 20, 2005**. Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, §7.075 provides that comments on an AO should be submitted to the commission in **writing**.

(1) COMPANY: Allauddin Momin dba 6-M Grocery; DOCKET NUMBER: 2004-1445-PST-E; TCEQ ID NUMBERS: 47979 and RN101183937; LOCATION: 805 East Farm-to-Market Road 1626, Manchaca, Travis County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); PENALTY: \$2,100; STAFF ATTORNEY: Ashley Kever, Litigation Division, MC 175, (512) 239-2987; REGIONAL OFFICE: Austin Regional Office, 1921 Cedar Bend Drive, Suite 150, Austin, Texas 78758-5336, (512) 339-2929.

(2) COMPANY: BP Products North America Inc.; DOCKET NUMBER: 2004-1532-AIR-E; TCEQ ID NUMBER: RN102535077; LOCATION: 2701 5th Avenue South, Texas City, Galveston County, Texas; TYPE OF FACILITY: petroleum refining plant; RULES VIOLATED: 30 TAC §116.115(c), TCEQ Air Permit Number 6488, Special Condition Number 2, and Texas Health and Safety Code (THSC), §382.085(b), by failing to prevent the unauthorized emission of volatile organic compounds exceeding the maximum allowable emission rate; and 30 TAC §101.201(b)(8) and THSC, §382.085(b), by failing to timely submit an administratively complete final emissions event report with the preconstruction authorization number and the authorized emission limits; PENALTY: \$8,372; STAFF ATTORNEY: Mary Clair Lyons, Litigation Division, MC 175, (512) 239-6996; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: Nucor Steel - Texas, A Division of Nucor Corporation; DOCKET NUMBER: 2002-0837-AIR-E; TCEQ ID NUMBER: LG-0006-S; LOCATION: 8812 Highway 79, Jewett, Leon County, Texas; TYPE OF FACILITY: steel mill; RULES VIOLATED: 30 TAC §116.115(c), TCEQ Air Quality Permit Number 2430/PSD-TX-1281, Special Condition Number 1, and THSC, §382.085(b), by exceeding its rate of steel production limits, and the resulting emissions limitations; 30 TAC §116.116(a) and (b) and THSC, §382.085(b), by causing, suffering, allowing, and/or permitting the emissions of nitrogen oxides, sulfur dioxide, and volatile organic compounds from

the operating electric arc furnaces where none of these pollutants were included on the Maximum Allowable Emission Rate Table for TCEQ Air Quality Permit Number 2430/PSD-TX-1281; 30 TAC §101.8(c) and THSC, §382.085(b), by failing to submit the required monitoring data; 30 TAC §111.155(1) and THSC, §382.085(b), by causing, suffering, allowing, and/or permitting its emissions to exceed the three-hour average for the net ground level concentration of particulate matter; 30 TAC §111.115(2) and THSC, §382.085(b), by causing, suffering, allowing, and/or permitting its emissions to exceed the one-hour average for the net ground level concentration of particulate matter; 30 TAC §116.115(b)(2)(E) and THSC, §382.085(b), by failing to maintain records in a sufficient manner to verify that natural gas usage associated with the ladle preheaters did not exceed 31,140 standard cubic feet for 8,736 hours annually; 40 Code of Federal Regulations §60.27a(c), by failing to submit semi-annual reports required by the new source performance standards in a timely manner; and 30 TAC §116.115(c), THSC, §382.085(b), and TCEQ Air Quality Permit Number 2430/PSD-TX-1281, Special Condition Number 2, by causing, suffering, allowing, and/or permitting the burning of unauthorized filter material and the resulting release of unauthorized emissions; PENALTY: \$327,500; STAFF ATTORNEY: Booker Harrison, Litigation Division, MC 175, (512) 239-4113; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(4) COMPANY: Robert McAdams dba Crossroads Mercantile; DOCKET NUMBER: 2003-1035- PST-E; TCEQ ID NUMBERS: 0029501 and RN102488780; LOCATION: Highway 59 South, Route 1, Box 1530, Henderson County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate continuous financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; and 30 TAC §334.22(a), by failing to pay outstanding UST fees; PENALTY: \$4,050; STAFF ATTORNEY: Ann Skowronski, Litigation Division, MC 175, (512) 239-2497; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3756, (903) 535-5100.

(5) COMPANY: Sarn Management, Inc. dba Toor Food Mart; DOCKET NUMBER: 2004-1328- PST-E; TCEQ ID NUMBERS: 39771 and RN101432466; LOCATION: 899 North Main Street, Liberty, Liberty County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (d)(4)(A)(ii)(II) and TWC, §26.3475(c)(1), by failing to monitor its USTs for releases at a frequency of at least once every month not to exceed 35 days between each monitoring; PENALTY: \$ 1,975; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: Sayed R. Ali dba Texas Super Stop Market; DOCKET NUMBER: 2004-1325- PST-E; TCEQ ID NUMBERS: 30066 and RN100889708; LOCATION: 4921 North Freeway, Houston, Harris County, Texas; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate continuous financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum USTs; PENALTY: \$3,270; STAFF ATTORNEY: Jeffrey Huhn, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: Southwest Tire Disposal, L.L.C.; DOCKET NUMBER: 2001-0725-MSW-E; TCEQ ID NUMBERS: 6200001, RN103043956, and RN104002720; LOCATION: 7282 Doniphan, Canutillo, El Paso County, and 1420 North Avenue Y, Lubbock, Lubbock County, Texas; TYPE OF FACILITY: used and scrap tire; RULES VIOLATED: 30 TAC §328.58(b), by failing to properly manifest scrap tires by not including the transporter's driver license number, state of issuance of the license, and the transporter's registration number on the manifests; 30 TAC §328.59(a) and §328.60(a), by failing to obtain a scrap tire storage site registration prior to storing more than 500 used or scrap tires on the ground or 2,000 used or scrap tires in trailers; 30 TAC §328.57(c)(3), by failing to transport used and scrap tires to an authorized site; 30 TAC §328.54(d), by failing to mark scrap tire transportation vehicles with the required transporter identification information; 30 TAC §328.57(d)(1) and (2), by failing to properly record changes to the transporter manifests; and 30 TAC §328.57(c)(1), by failing to register as a transporter prior to transporting used and scrap tires; PENALTY: \$12,140; STAFF ATTORNEY: Lindsay Andrus, Litigation Division, MC 175, (512) 239-4761; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949 and Lubbock Regional Office, 4630 50th Street, Suite 600, Lubbock, Texas 79414-3520, (806) 796-7092.

TRD-200501883

Paul C. Sarahan

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: May 10, 2005



Notice of Proposed Water Quality General Permit Renewal Authorizing the Discharge of Wastewater

TXG340000; The Texas Commission on Environmental Quality (TCEQ) proposes to renew a general permit (Proposed General Permit No. TXG340000) that will authorize the discharge of facility wastewater, contact storm water, and storm water associated with industrial activities from petroleum bulk stations and terminals (SIC 5171) into or adjacent to water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by Section 26.040 of the Texas Water Code. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The Executive Director proposes to require permittees to submit a Notice of Intent to obtain authorization for discharges.

TXG110000; The Texas Commission on Environmental Quality (TCEQ) proposes to renew a general permit (Proposed General Permit No. TXG110000) that will authorize the discharge of facility wastewater, contact storm water, and storm water associated with industrial activities from ready-mixed concrete plants, concrete products plants, and their associated facilities (SIC 3271, 3272, and 3273) into or adjacent to water in the state. The proposed general permit applies to the entire state of Texas. General permits are authorized by Section 26.040 of the Texas Water Code. No significant degradation of high quality waters is expected and existing uses will be maintained and protected. The permit specifies which facilities may be authorized under this general permit and those which must be authorized by individual permit.

GENERAL INFORMATION. The Executive Director has reviewed these actions for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to Coastal Coordination Council (CCC) regulations, and has determined that these actions are consistent with applicable CMP goals and policies.

A copy of the proposed general permits and fact sheets are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F. These documents are also available at the TCEQ's sixteen (16) regional offices and on the TCEQ website at <http://www.tnrcc.state.tx.us/permitting/waterperm/wwperm/tpdesgen.html>.

PUBLIC COMMENT / PUBLIC MEETING. You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comment or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 within 30 days from the date this notice is published in the *Texas Register*.

APPROVAL PROCESS. After the comment period, the Executive Director will consider all the public comments and prepare a response. The response to comments will be mailed to everyone who submitted public comments or who requested to be on a mailing list for this general permit. The general permit will then be set for the Commissioners' consideration at a scheduled Commission meeting.

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: (1) the mailing list for this specific general permit; (2) the permanent mailing list for a specific applicant name and permit number; and/or (3) the permanent mailing list for a specific county. Clearly specify which mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address above. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about this permit application or the permitting process, please call the TCEQ Office of Public Assistance, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.tceq.state.tx.us. Further information may also be obtained by calling Yvonna Pierce of the Water Quality Division (512) 239-6922.

TRD-200501899

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 11, 2005



Notice of Water Quality Applications

The following notices were issued during the period of May 4, 2005 through May 9, 2005.

The following require the applicants to publish notice in the newspaper. The public comment period, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THIS NOTICE.

CITY OF ALTO has applied for a renewal of TPDES Permit No. 10546-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 400,000 gallons per

day. The facility is located approximately 4,000 feet southeast of the intersection of State Highway 21 and U.S. Highway 69 in Cherokee County, Texas.

CITY OF BOOKER has applied for a renewal of Permit No. 10814-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 160,000 gallons per day via irrigation of 157.33 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately one mile northwest of the intersection of State Highway 15 and Farm-to-Market Road 1265 in Lipscomb County, Texas.

VILLAGE OF BRIARCLIFF has applied for a renewal of Permit No. 13639-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 11,000 gallons per day via subsurface soils absorption on 1.201 acres of drainfields. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located approximately 3.8 miles northeast of the intersection of State Highway 71 and Farm-to-Market Road 2322 (Pace Bend Road) and approximately 0.4 mile northeast of the intersection of Farm-to-Market Road 2322 and Cat Hollow Club Drive in Travis County, Texas.

BROWNSVILLE NAVIGATION DISTRICT has applied for a renewal of TPDES Permit No. 14355-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 100,000 gallons per day. The facility is located on the north side of State Highway 48, approximately 0.7 mile east of the intersection of State Highway 48 and Farm-to-Market Road 511 northeast of the City of Brownsville in Cameron County, Texas.

COASTAL BEND YOUTH CITY has applied for a renewal of TPDES Permit No. 11689-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 15,000 gallons per day. The facility is located on the north side of U.S. Highway 77, approximately two miles north of the intersection of Farm-to-Market Road 655 and U.S. Highway 77 in Nueces County, Texas.

THE CITY OF COTULLA has applied for a renewal of TPDES Permit No. 10153-001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 990,000 gallons per day. The plant site is located approximately 1.1 miles south of the intersection of State Highway 97 and State Highway 624 and 1.1 miles southeast of the intersection of U.S. Highway-Business 81 and State Highway 97 in La Salle County, Texas.

CITY OF FLOYDADA has applied for a major amendment to Permit No. 10170-001, to authorize the removal of the 30-day average Biochemical Oxygen Demand (5-day) limit. The current permit authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day via irrigation on 128 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located 0.5 mile south of U.S. highway 70 and approximately 1.5 miles east of Farm-to-Market Road 1958 in Floyd County, Texas.

HYAS CORPORATION has applied for a new permit, proposed Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0014571001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 980,000 gallons per day. The facility will be located approximately 550 feet south of Interstate Highway 10 and 2,200 feet east of Igloo Road in Waller County, Texas.

CITY OF LLANO has applied for a renewal of Permit No. 10209-001, which authorizes the disposal of treated domestic wastewater at a daily

average flow not to exceed 600,000 gallons per day via irrigation of 210 acres. The current permit authorizes land application of sewage sludge for beneficial use on 10 acres. The anticipated date of the first application of sludge, subject to the re-issuance of the permit, is May 1, 2005. This permit will not authorize a discharge of pollutants into waters in the State. The facility and disposal site are located 350 feet south of the center line of the Llano River and approximately 1.05 miles north of State Highway 71, and 1.25 miles east of the Llano County Courthouse in Llano County, Texas.

THE PREMCOR REFINING GROUP INC. which operates the Port Arthur Refinery, a petroleum refinery, has applied for a major amendment to TPDES Permit No. WQ0000309000 to authorize an increase in effluent limits due to a two-stage production increase via Outfall 001; an increase in the daily average flow from a volume not to exceed 30,000,000 gallons per day to a daily average flow volume not to exceed 33,000,000 gallons per day via Outfall 001; the addition of the discharge of hydrostatic test water and storm water from construction activities via Outfall 001; a decrease in the monitoring frequency for total chromium from once per day to once per quarter based on good compliance at Outfall 001; the addition of the discharge of hydrostatic test water and storm water from construction activity via Outfalls 004 and 005; add new Outfalls 006, 007 and 008 to discharge hydrostatic test water, storm water and storm water from construction activity on an intermittent and flow variable basis; and the addition of new Outfall 009 to discharge storm water and storm water runoff associated with industrial activities from a concrete batch plant on an intermittent and flow variable basis. The current permit authorizes the discharge of process wastewater, cooling tower blowdown, boiler blowdown, ballast water, domestic wastewater, remediation wastewater and storm water at a daily average flow not to exceed 30,000,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfalls 004 and 005. The facility is located approximately 0.5 mile north of the Martin Luther King Bridge on State Highway 82, southwest of the City of Port Arthur, Jefferson County, Texas.

CITY OF WICKETT has applied for a renewal of Permit No. 10622-001, which authorizes the disposal of treated domestic wastewater at a volume not to exceed a daily average flow of 91,000 gallons per day via surface irrigation of 18 acres of non-public access land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facilities and disposal site are located south of the City of Wickett between U.S. Highway 80 and Interstate Highway 20 in Ward County, Texas.

TRD-200501903

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 11, 2005



Notice of Water Rights Application

Notice mailed May 5, 2005.

APPLICATION NO. 5882; Kimberlin PK Trust & Charlotte Jane Parks Trust No 101, 3322 Shorecrest Drive, Suite 200, Dallas, Texas 75235, applicants, seek a Water Use Permit pursuant to Texas Water Code (TWC) 11.121 and Texas Commission on Environmental Quality (TCEQ) Rules 30 Texas Administrative Code (TAC) 295.1, et seq. Applicants seek authorization to maintain an existing dam and reservoir on Loving Creek, tributary of the Brazos River, Brazos River Basin for in-place recreational, flood control, erosion control domestic, and livestock purposes in Palo Pinto County. The reservoir has a capacity of 1,282 acre-feet with a surface area of 68 acres.

Station 4+00 on the centerline of the dam is S 50 E, 3,660 feet from the northwest corner of the BBB & CRR Survey, Abstract A-102 in Palo Pinto County, also being at Latitude 32.8731 N, Longitude 98.4016 W. The dam and reservoir are located 18 miles northwest of the City of Palo Pinto and 10 miles southwest of the City of Graford in Palo Pinto County. Ownership of the lands inundated by the dam and reservoir is evidenced by recorded as Deeds: Volume 866, Page 464-470; Volume 215, Page 186; Volume 249, Page 297; Volume 325, Page 425; Volume 635, Page 820; Volume 617, Page 639; Volume 617, Page 636; Volume 617, Page 636, Volume 600, Page 813; Volume 617, Page 734; Volume 802, Page 401; Volume 617, Page 726; Volume 802, Page 399; Volume 169, Page 812; Volume 802, Page 397, Volume 617, Page 643, Volume 802, Page 726; Volume 732, Page 487; Volume 866, Page 464 in the Official Records of Palo Pinto County. Applicants indicate they have a groundwater well that can produce 400 gallons per minute as an alternative water source to offset evaporative losses. The Commission will review the application as submitted by the applicants and may or may not grant the application as requested. The application was received on February 22, 2005. Additional information and fees were received on March 30, April 5, and April 11, 2005. The application was declared administratively complete and was accepted for filing with the Office of the Chief Clerk on April 18, 2005. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

INFORMATION SECTION

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement "[I/we] request a contested case hearing;" and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the TCEQ Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Office of Public Assistance at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.state.tx.us.

TRD-200501900

LaDonna Castañuela

Chief Clerk

Texas Commission on Environmental Quality

Filed: May 11, 2005

Texas Health and Human Services Commission

Notice of Adopted Payment Rates for Large State-Operated Facilities in the Intermediate Care Facilities for Persons with Mental Retardation Program

Proposal. As the single state agency for the state Medicaid program, the Texas Health and Human Services Commission (HHSC) adopts a per diem payment rate of \$294.72 for large state-operated facilities in the Intermediate Care Facilities for Persons with Mental Retardation program for SFY 2005, effective September 1, 2004. The adopted rate was modified from the rate proposed for large state operated facilities that was published in the November 19, 2004, issue of the *Texas Register* (29 TexReg 10819).

HHSC conducted a public hearing to receive public comment on the proposed payment rate for large state-operated facilities in the Intermediate Care Facilities for Persons with Mental Retardation program. The hearing was held in compliance with Title 1 of the Administrative Code (TAC), §355.105(g), which requires public hearings on proposed payment rates. The public hearing was held on December 7, 2004, at 11:00 a.m., in the Palo Duro Conference Room of the Braker Center Building H, at 11209 Metric Boulevard, Austin, Texas 78758-4021.

Methodology and justification. The adopted rate was determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.456.

TRD-200501896

Lee Dickinson

Assistant General Counsel

Texas Health and Human Services Commission

Filed: May 10, 2005

Department of State Health Services

Notice of Emergency Cease and Desist Order on Community Diagnostics, Inc.

Notice is hereby given that the Department of State Health Services (department) ordered Community Diagnostics, Inc. (unregistered) of Dallas to cease and desist using all x-ray producing machines for mammography of humans.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501895

Cathy Campbell

Director, Legal Services

Department of State Health Services

Filed: May 10, 2005

Notice of Emergency Cease and Desist Order on DeSoto Surgicare Partners, Ltd.

Notice is hereby given that the Department of State Health Services (department) ordered DeSoto Surgicare Partners, Ltd. (registrant-R23209-000) of Dallas to cease and desist using the General Electric x-ray unit until the entrance exposure radiation level is within regulatory limits.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501894
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: May 10, 2005



Notice of Revocation of Certificates of Registration

The Department of State Health Services, having duly filed complaints pursuant to 25 Texas Administrative Code, §289.205, has revoked the following certificates of registration: Robert M. Mapula, D.D.S., El Paso, R03425, April 18, 2005; Jeffrey L. Brandon, M.D., El Paso, R07143, April 18, 2005; Stephen A. Laman, D.D.S., Houston, R16169, April 18, 2005; Mason Clinic, Dallas, R21251, April 18, 2005; Acme Bryan Chiropractic, LLC, Beaumont, R22729, April 18, 2005; Accident & Wellness Chiropractic, Dallas, R23243, April 18, 2005; Jeff A. Cohan, D.D.S., PLLC, De Soto, R23592, April 18, 2005; DRTC Chiropractic, Richmond, R23595, April 18, 2005; Clinica Santa Teresa, Houston, R25597, April 18, 2005; Mission Pediatric Center, Mission, R25798, April 18, 2005; Jeffrey L. Little, D.C., Bartonville, R26382, April 18, 2005; TNNT Corporation, Garland, R26557, April 18, 2005; Dekko Global Enterprise, LLC, El Paso, R26893, April 18, 2005; Chiropractic Family Wellness/Health, McKinney, R27165, April 18, 2005; Danny R. Cox, D.V.M., PC, Celina, R27316, April 18, 2005; Cy-Fair Institute, Huntsville, Z01038, April 18, 2005; Appearance Dermatology, PA, Austin, Z01281, April 18, 2005; Laser Comm Inc., Los Angeles, California, Z01417, April 18, 2005.

A copy of all relevant material is available, by appointment, for public inspection at the Department of State Health Services, Exchange Building, 8407 Wall Street, Austin, Texas, telephone (512) 834-6688, Monday-Friday, 8:00 a.m. to 5:00 p.m. (except holidays).

TRD-200501904
Cathy Campbell
Director, Legal Services
Department of State Health Services
Filed: May 11, 2005



Texas Higher Education Coordinating Board

Request for Proposals 2005 - 2006 First Generation College Student Grant Program, Under U.S. Department of Labor's Workforce Investment Act, Section 174(B), Section 211(A), and Section 111(A)

Approximately \$2 million over 2005 - 2006 will be available to support supplemental scholarships for eligible first generation college students in Texas institutions of higher education, and to support College Enrollment Workshops conducted by institutions of higher education.

Funds will be competitively distributed by the Texas Higher Education Coordinating Board under the First Generation College Student Initiative. This initiative is a joint effort between the Texas Workforce Commission, the Texas Education Agency and the Texas Higher Education Coordinating Board. Proposals for funding must be submitted by June 1, 2005 to the Texas Higher Education Coordinating Board. Applications will be available on the website of the Coordinating Board during the week of May 9, 2005 and thereafter.

The First Generation College Student Grants which will be awarded to institutions of higher education are designed to support the recruitment and retention of eligible first generation college students from targeted

regions of the state. The targeted regions, defined by the Texas Workforce Commission's Local Workforce Development Board Regions, include Cameron County, Deep East Texas, Gulf Coast, South East Texas, South Plains, Upper Rio Grande, Alamo, Dallas, North Central, North East Texas, Panhandle, and Tarrant County Workforce Development Areas. Grants awards of up to \$50,000 each will be made to support eligible applicants, with an estimated 40 awards for 2005-2006.

All public and private colleges and universities are eligible to apply for grants under the First Generation College Student Grants Program, if they are responsive to the priorities and restrictions described in the Request for Proposals (RFP).

For a complete copy of the Request for Proposals, contact Natalie Coffey via email at natalie.coffey@thehb.state.tx.us or visit the Texas Higher Education Coordinating Board website at <http://www.thehb.state.tx.us/AnE/FirstGenCollegeStudentGrant/default.htm>.

TRD-200501886
Jan Greenberg
General Counsel
Texas Higher Education Coordinating Board
Filed: May 10, 2005



Houston-Galveston Area Council

Public Meeting on the Draft 2006 - 2007 Unified Planning Work Program (UPWP)

Wednesday, June 1, 2005

3555 Timmons Lane, 2nd Floor Conference Room A

5:30 p.m. - 7:00 p.m.

On Wednesday, June 1, 2005, the Houston-Galveston Area Council (H-GAC) will host a public meeting on the Draft 2006 - 2007 Unified Planning Work Program (UPWP). The UPWP outlines the proposed tasks and estimated cost associated with conducting the region's transportation planning and research for the next two years. The public is encouraged to attend this important meeting and provide comments to H-GAC.

The public comment period on the Draft UPWP begins **May 9, 2005**, and all comments must be received by H-GAC no later than **5:00 p.m., June 29, 2005**. Written comments may be submitted to Jerry Bobo, Houston-Galveston Area Council, P.O. Box 22777, Houston, Texas 77227, or jerry.bobo@h-gac.com. Comments can also be faxed to (713) 993-4508. Copies of the Draft UPWP will be available at the meeting, as well as on the H-GAC Transportation Web site at www.h-gac.com/transportation or by calling (713) 993-4571. For more information, please contact Jerry Bobo, Transportation Program Manager, at (713) 993-4571 or jerry.bobo@h-gac.com.

In compliance with the Americans with Disabilities Act, H-GAC will provide for reasonable accommodations for persons with disabilities attending H-GAC functions. Requests should be received by H-GAC 24 hours prior to the function. Call Jerry Bobo at (713) 993-4571 to make arrangements.

TRD-200501909
Alan Clark
MPO Director
Houston-Galveston Area Council
Filed: May 11, 2005



North Central Texas Council of Governments

Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant proposal request appeared in the January 14, 2005 issue of the *Texas Register* (30 TexReg 155). The selected consultant will perform the technical and professional work to conduct the Trinity Railway Express (TRE) Strategic Plan.

The consultant selected for this project is Howard/Stein-Hudson Associates Inc., 38 Chauncy Street, Boston, MA 02111. The maximum amount of this contract is \$117,176.

TRD-200501911

R. Michael Eastland

Executive Director

North Central Texas Council of Governments

Filed: May 11, 2005

Public Utility Commission of Texas

Notice of Application for an Amendment to its Designation as an Eligible Telecommunications Provider Pursuant to P.U.C. Substantive Rule §26.417

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 6, 2005, for an amendment to its designation as an eligible telecommunications provider (ETP) pursuant to P.U.C. Substantive Rule §26.417.

Docket Title and Number: Application of Panhandle Telecommunication Systems, Incorporated for an Amendment to its Designation as an Eligible Telecommunications Provider (ETP) Pursuant to P.U.C. Substantive Rule §26.417. Docket Number 31068.

The Application: The company is requesting an amendment to its ETP designation to include the exchange of Spearman, in which Valor Telecommunications of Texas, LP is the incumbent provider, and to change the name to PTCL. The Company holds Certificate of Operating Authority Number 50016.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 9, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31068.

TRD-200501890

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 10, 2005

Notice of Application for an Amendment to the Designation as an Eligible Telecommunications Carrier Pursuant to P.U.C. Substantive Rule §26.418

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 6, 2005, for an amendment to the designation as an eligible telecommunications carrier (ETC) pursuant to P.U.C. Substantive Rule §26.418.

Docket Title and Number: Application of Panhandle Telecommunication Systems, Incorporated for an Amendment to the Designation as an Eligible Telecommunications Carrier (ETC) Pursuant to P.U.C. Substantive Rule §26.418. Docket Number 31066.

The Application: The company is requesting to amend its ETC designation to include the exchange of Spearman, in which Valor Telecommunications of Texas, LP is the incumbent provider, and to change the name to PTCL. Panhandle Telecommunications Systems, Incorporated holds Certificate of Operating Authority Number 50016.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 9, 2005. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31066.

TRD-200501889

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 10, 2005

Notice of Application for Certificate of Convenience and Necessity for a Proposed Transmission Line in Dallas, Johnson, Tarrant, and Ellis Counties, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) an application on May 5, 2005, for a certificate of convenience and necessity for a proposed transmission line in Dallas, Johnson, Tarrant, and Ellis Counties, Texas.

Docket Style and Number: Application of TXU Electric Delivery Company for a Certificate of Convenience and Necessity (CCN) for a Proposed Transmission Line in Dallas, Johnson, Tarrant, and Ellis Counties, Texas. Docket Number 31011.

The Application: The project is designated the Venus-Liggett 345 kV Transmission Line Project. TXU Electric Delivery Company stated that the project address two important needs of the transmission grid serving the Dallas-Fort Worth metroplex and surrounding area. The project will strengthen the entire transmission system in the Dallas/Fort Worth Area and will improve reliability. The construction of the proposed transmission line project involves several segments. The estimated cost for the total project is \$37,200,000. The estimated date to energize facilities is May 2006.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. The deadline for intervention in this proceeding is June 20, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31011.

TRD-200501888

Adriana A. Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: May 10, 2005

Notice of Application for Clarification of Certificated Service Area Boundaries in Taylor County, Texas

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application filed on May 5, 2005, for clarification of a service area boundary within Taylor County, Texas.

Docket Style and Number: Application of AEP Texas North Company and Taylor Electric Cooperative, Incorporated for Clarification of Service Area Boundary in Taylor, County. Docket Number 31064.

The Application: AEP Texas North Company (TNC) and Taylor Electric Cooperative, Incorporated (Taylor) have been unable to resolve a disagreement over the exact location of the service area boundary in the Loop 322 and Industrial Boulevard area of Abilene. Development in the area has led to disagreements between TNC and Taylor regarding the specific location of the service area boundary in that area. TNC and Taylor have agreed to jointly file this petition to seek Commission clarification of the exact location of the service area boundary in the Loop 322 and Industrial Boulevard area.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll-free at 1-888-782-8477. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or use Relay Texas (toll-free) 1-800-735-2989. All comments should reference Docket Number 31064.

TRD-200501879

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2005

Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on May 4, 2005, for a service provider certificate of operating authority (SPCOA), pursuant to Public Utility Regulatory Act (PURA) §§54.151 - 54.156. A summary of the application follows.

Docket Title and Number: Application of Northeast Texas Broadband, LLC for a Service Provider Certificate of Operating Authority, Docket Number 31062 before the Public Utility Commission of Texas.

Applicant intends to provide ADSL, HDSL, SDSL, RADSL, VDSL, and T1-Private Line services.

Applicant's requested SPCOA geographic area includes the area served by all incumbent local exchange companies throughout the State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than May 25, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2989. All comments should reference Docket Number 31062.

TRD-200501839

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 6, 2005

Notice of Petition for Expanded Local Calling Service

Notice is given to the public of the filing with the Public Utility Commission of Texas of a petition on March 31, 2005, for expanded local calling service (ELCS), pursuant to Chapter 55, Subchapter C of the Public Utility Regulatory Act (PURA). A summary of the application follows.

Project Title and Number: Petition for Expanded Local Calling Service from the El Sauz Exchange to the Exchanges of Rio Grande City and Roma, Project Number 30956.

The petitioners in the El Sauz exchange request ELCS to the exchanges of Rio Grande City and Roma.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326, or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than June 6, 2005. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission at (512) 936-7136 or toll free at 1-800-735-2789. All comments should reference Project Number 30956.

TRD-200501891

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2005

Rio Grande Council of Governments

Request for Qualifications - Regional Communications Plan

The Rio Grande Council of Governments (RGCOG) desires to contract with a qualified firm or individual without a direct vendor affiliation to facilitate the development of a plan to integrate current communication systems among eighteen jurisdictions. The plan will also identify a cost-effective process for creating 9-1-1 redundancy in the region, as well as produce recommendations for the establishment of local Emergency Notification Systems.

A copy of the RGCOG Request for Qualification package may be obtained with a written request sent to:

RGCOG

Attn: Marisa Quintanilla
1100 N. Stanton, Ste. 610
El Paso, Texas 79902

Or, a request can be filed by fax to the following number: (915) 532-9385 - Attention: Marisa Quintanilla.

Completed proposals must be received by the RGCOG no later than 4:00 p.m. on Friday, June 17, 2005, in order to be considered. RGCOG reserves the right to negotiate with any and all consultants or firms that submit proposals as per the Government Code §2254.

The RGCOG is an Affirmative Action/Equal Opportunity Employer.

TRD-200501885

Jake Brisbin
Executive Director
Rio Grande Council of Governments
Filed: May 10, 2005

Texas Department of Transportation

Request for Proposal for Aviation Engineering Services--Aviation Division

Montgomery County, through its agent, the Texas Department of Transportation (TxDOT), intends to engage an aviation professional engineering firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional aviation engineering design services described below:

Airport Sponsor: Montgomery County, Lone Star Executive Airport. TxDOT CSJ No.:0512CNROE. Scope: Provide engineering/design services to reconstruct south T-hangar taxiway area around existing double-sided T-hangars (720'x50').

The DBE goal is set at 10%. TxDOT Project Manager is Bijan Jamalabad, P.E.

To assist in your proposal preparation the most recent airport layout plan and 5010 drawing are available online at www.dot.state.tx.us/avn/avninfo/notice/consult/index.htm by selecting "Lone Star Executive Airport."

Interested firms shall utilize the latest version of Form AVN-550, titled "Aviation Engineering Services Proposal". The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address <http://www.dot.state.tx.us/avn/avn550.doc>. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is an MS Word Template.

Four completed, unfolded copies of Form AVN-550 must be postmarked by U. S. Mail by midnight Friday, June 10, 2005 (CDT). Mailing address: TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701. Overnight delivery must be received by 4:00 p.m. (CDT) on Monday, June 13, 2005. Overnight address: TxDOT Aviation Division, 200 E. Riverside Drive, Austin, Texas, 78704. Hand delivery must be received by 4:00 p.m. Monday, June 13, 2005 (CDT). Hand delivery address: 150 E. Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Amy Slaughter.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating engineering proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews of the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Amy Slaughter, Grant Manager, or Bijan Jamalabad, P.E., Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200501810

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: May 6, 2005

Request for Proposal for Professional Services--Aviation Division

The County of Randall through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: Randall County. TxDOT CSJ No. 0504RANDL.

Scope: The project is a feasibility study to examine the need for a new airport. Possible future project may include site selection, environmental assessment and airport master plan should it be determined that a new airport is necessary.

The HUB goal is set at 0%. TxDOT Project Manager is Bruce Ehly.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site, URL address www.dot.state.tx.us/avn/avn551.doc. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT. To ensure utilization of the latest version of Form 551, firms are encouraged to download Form 551 from the TxDOT website as addressed above. Utilization of Form 551 from a previous download may not be the exact same format. Form 551 is an MS Word Template.

Five unfolded copies of Form AVN-551 must be postmarked by U.S. Mail by midnight June 10, 2005 (CDT). Mailing address: TxDOT, Aviation Division, 125 East 11th Street, Austin, Texas 78701-2483. Overnight delivery must be received by 4:00 p.m. (CDT) on June 13, 2005. Overnight address: TxDOT, Aviation Division, 200 East Riverside Drive, Austin, Texas 78704. Please mark the envelope of the forms to the attention of Sheri Quinlan. Hand delivery must be received by 4:00 p.m. (CDT) on June 13, 2005. Hand delivery address: 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704. Electronic facsimiles or forms sent by email will not be accepted.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made immediately following the completion of review of proposals. The committee will review all proposals and rate and rank each. The criteria for evaluating planning proposals can be found at www.dot.state.tx.us/business/avnconsultinfo.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to

conduct interviews for the top rated firms if the committee deems it necessary. In such case, selection will be made following interviews.

If there are any procedural questions, please contact Sheri Quinlan, Grant Manager, or Bruce Ehly, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-200501808

Bob Jackson

Deputy General Counsel

Texas Department of Transportation

Filed: May 5, 2005



Request for Qualifications

Pursuant to the authority granted under Texas Transportation Code, Chapter 361, Subchapter I (the "Enabling Legislation"), the Texas Department of Transportation ("TxDOT") may enter into comprehensive development agreements for the design, construction, financing, maintenance, or operation of turnpike projects on the state highway system. The Enabling Legislation authorizes private involvement in turnpike projects and provides a process for TxDOT to solicit proposals for such projects. Transportation Code, §361.3022 prescribes requirements for a solicited proposal and requires TxDOT to publish a request for qualifications in the *Texas Register* that includes the criteria that will be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which the proposals must be received. The Texas Transportation Commission (the "Commission") has promulgated rules located at Title 43, Texas Administrative Code, §§27.1 - 27.5 (the "Rules"), governing the submission and processing of solicited proposals and providing for publication of notice that TxDOT is requesting qualifications for development of a turnpike project with private involvement. The Commission has decided to issue a request for qualifications for the I-635 Managed Lanes Project ("Project") developed by TxDOT.

This notice represents the next step in the process of requesting qualifications to potentially develop, design, construct, finance, and operate the Project, including proposed tolled managed lanes along I-635 from US 75 to I-35E and then south to the I-35E and Loop 12 split in Dallas County, as well as other potential facilities to the extent necessary for connectivity, mobility, safety, and financing. The proposed Project includes managed lanes in two tunnels located underneath the I-635 general purpose lanes. The design solution includes a plan to interconnect these managed lanes to and through the I-35E interchange south to the Loop 12 and I-35E split. TxDOT received two separate Findings of No Significant Impact for the proposed Project on April 29, 2004 and December 12, 2002 from the Federal Highway Administration. On April 28, 2005, in Minute Order 110052, the Commission authorized TxDOT to commence the solicited proposal procurement process for the Project under the Enabling Legislation.

Through this notice, TxDOT is seeking qualifications submittals ("QS") in response to a request for qualifications ("RFQ"). TxDOT intends to evaluate any QS received and may request submission of a detailed proposal, potentially leading to negotiation, award, and execution of a comprehensive development agreement. TxDOT will accept for consideration any QS received in accordance with the Rules within 120 days of the publication of this notice. TxDOT anticipates issuing the RFQ, receiving and analyzing the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for detailed proposals ("RFDP") to the shortlisted entities. After review and a best value evaluation of the responses to the RFDP, TxDOT may negotiate and enter into a comprehensive development agreement for the project.

RFQ Evaluation Criteria. QSs will be evaluated by TxDOT for short-listing purposes using the following general criteria: relative strength and depth of entity qualifications, personnel qualifications, financial qualifications and legal qualifications; relative strength, feasibility and desirability of the proposed conceptual project development plan; and relative strength, feasibility and desirability of the proposed conceptual project financing plan. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. TxDOT currently anticipates that the RFQ will be available on May 20, 2005. The RFQ will include a conceptual project design. Copies of the RFQ will be available at TxDOT's Dallas District offices located at 4777 E. HWY 80, Mesquite, Texas 75150-6643, or on the following website: <http://www.dot.state.tx.us>. QSs will be due on September 22, 2005 at the address specified in the RFQ.

TRD-200501908

Joanne Wright

Associate General Counsel

Texas Department of Transportation

Filed: May 11, 2005



Texas Workers' Compensation Commission

Invitation to Apply to the Medical Advisory Committee (MAC)

The Texas Workers' Compensation Commission seeks to have a diverse representation on the MAC and invites all qualified individuals from all regions of Texas to apply for openings on the MAC in accordance with the eligibility requirements of the Procedures and Standards for the Medical Advisory Committee. The Medical Review Division is currently accepting applications for the following Medical Advisory Committee vacancies:

Primary

- * Dentist
- * Employer
- * General Public 1

Alternate

- * Public Health Care Facility Representative
- * Dentist
- * Pharmacist,
- * Employer
- * General Public 1
- * Insurance Carrier

Commissioners for the Texas Workers' Compensation Commission appoint the Medical Advisory Committee members who are composed of 18 primary and 18 alternate members representing health care providers, employees, employers, insurance carriers, and the general public. Primary members are required to attend all Medical Advisory Committee meetings, subcommittee meetings, and work group meetings to which they are appointed. The alternate member may attend all meetings, however during a primary member's absence, the alternate member must attend all meetings to which the primary member is appointed. Requirements and responsibilities of members are established in the Procedures and Standards for the Medical Advisory Committee as adopted by the Commission.

The Medical Advisory Committee meetings must be held at least quarterly each fiscal year during regular Commission working hours. Members are not reimbursed for travel, per diem, or other expenses associated with Committee activities and meetings.

The purpose and task of the Medical Advisory Committee, which includes advising the Commission's Medical Review Division on the development and administration of medical policies, rules and guidelines, are outlined in the Texas Workers' Compensation Act, §413.005.

Applications and other relevant Medical Advisory Committee information may be viewed and downloaded from the Commission's website at <http://www.twcc.state.tx.us> and then clicking on Calendar of Commission Meetings, Medical Advisory Committee. Applications may also be obtained by calling Jane McChesney, MAC Coordinator, at 512-804-4855 or R. L. Shipe, Director, Medical Review, at 512-804-4802.

The qualifications as well as the terms of appointment for all positions are listed in the Procedures and Standards for the Medical Advisory Committee. These Procedures and Standards are as follows:

LEGAL AUTHORITY. The Medical Advisory Committee for the Texas Workers' Compensation Commission, Medical Review Division is established under the Texas Workers' Compensation Act, (the Act) §413.005.

PURPOSE AND ROLE. The purpose of the Medical Advisory Committee (MAC) is to bring together representatives of health care specialties and representatives of labor, business, insurance and the general public to advise the Medical Review Division in developing and administering the medical policies, fee guidelines, and the utilization guidelines established under §413.011 of the Act.

COMPOSITION Membership. The composition of the committee is governed by the Act, as it may be amended. Members of the committee are appointed by the Commissioners and must be knowledgeable and qualified regarding work-related injuries and diseases.

Members of the committee shall represent specific health care provider groups and other groups or interests as required by the Act, as it may be amended. As of September 1, 2001, these members include a public health care facility, a private health care facility, a doctor of medicine, a doctor of osteopathic medicine, a chiropractor, a dentist, a physical therapist, a podiatrist, an occupational therapist, a medical equipment supplier, a registered nurse, and an acupuncturist. Appointees must have at least six (6) years of professional experience in the medical profession they are representing and engage in an active practice in their field.

The Commissioners shall also appoint the other members of the committee as required by the Act, as it may be amended. An insurance carrier representative may be employed by: an insurance company; a certified self-insurer for workers' compensation insurance; or a governmental entity that self-insures, either individually or collectively. An insurance carrier member may be a medical director for the carrier but may not be a utilization review agent or a third party administrator for the carrier.

A health care provider member, or a business the member is associated with, may not derive more than 40% of its revenues from workers compensation patients. This fact must be certified in their application to the MAC.

The representative of employers, representative of employees, and representatives of the general public shall not hold a license in the health care field and may not derive their income directly from the provision of health care services.

The Commissioners may appoint one alternate representative for each primary member appointed to the MAC, each of whom shall meet the qualifications of an appointed member.

Terms of Appointment: Members serve at the pleasure of the Commissioners, and individuals are required to submit the appropriate application form and documents for the position. The term of appointment for any primary or alternate member will be two years, except for unusual circumstances (such as a resignation, abandonment or removal from the position prior to the termination date) or unless otherwise directed by the Commissioners. A member may serve a maximum of two terms as a primary, alternate or a combination of primary and alternate member. Terms of appointment will terminate August 31 of the second year following appointment to the position, except for those positions that were initially created with a three-year term. For those members who are appointed to serve a part of a term that lasts six (6) months or less, this partial appointment will not count as a full term.

Abandonment will be deemed to occur if any primary member is absent from more than two (2) consecutive meetings without an excuse accepted by the Medical Review Division Director. Abandonment will be deemed to occur if any alternate member is absent from more than two (2) consecutive meetings which the alternate is required to attend because of the primary member's absence without an excuse accepted by the Medical Review Division Director.

The Commission will stagger the August 31st end dates of the terms of appointment between odd and even numbered years to provide sufficient continuity on the MAC.

In the case of a vacancy, the Commissioners will appoint an individual who meets the qualifications for the position to fill the vacancy. The Commissioners may re-appoint the same individual to fill either a primary or alternate position as long as the term limit is not exceeded. Due to the absence of other qualified, acceptable candidates, the Commissioners may grant an exception to its membership criteria, which are not required by statute.

RESPONSIBILITY OF MAC MEMBERS Primary Members. Make recommendations on medical issues as required by the Medical Review Division.

Attend the MAC meetings, subcommittee meetings, and work group meetings to which they are appointed.

Ensure attendance by the alternate member at meetings when the primary member cannot attend.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies.

Alternate Members. Attend the MAC meetings, subcommittee meetings, and work group meetings to which the primary member is appointed during the primary member's absence.

Maintain knowledge of MAC proceedings.

Make recommendations on medical issues as requested by the Medical Review Division when the primary member is absent at a MAC meeting.

Provide other assistance requested by the Medical Review Division in the development of guidelines and medical policies when the primary member is absent from a MAC meeting.

Committee Officers. The chairman of the MAC is designated by the Commissioners. The MAC will elect a vice chairman. A member shall be nominated and elected as vice chairman when he/she receives a majority of the votes from the membership in attendance at a meeting at which nine (9) or more primary or alternate members are present.

Responsibilities of the Chairman. Preside at MAC meetings and ensure the orderly and efficient consideration of matters requested by the Medical Review Division.

Prior to a MAC meeting confer with the Medical Review Division Director, and when appropriate, the TWCC Executive Director to receive information and coordinate:

- a. Preparation of a suitable agenda.
- b. Planning MAC activities.
- c. Establishing meeting dates and calling meetings.
- d. Establishing subcommittees.
- e. Recommending MAC members to serve on subcommittees.

If requested by the Commission, appear before the Commissioners to report on MAC meetings.

COMMITTEE SUPPORT STAFF. The Director of Medical Review will provide coordination and reasonable support for all MAC activities. In addition, the Director will serve as a liaison between the MAC and the Medical Review Division staff of TWCC, and other Commission staff if necessary.

The Medical Review Director will coordinate and provide direction for the following activities of the MAC and its subcommittees and work groups:

Preparing agenda and support materials for each meeting.

Preparing and distributing information and materials for MAC use.

Maintaining MAC records.

Preparing minutes of meetings.

Arranging meetings and meeting sites.

Maintaining tracking reports of actions taken and issues addressed by the MAC.

Maintaining attendance records.

SUBCOMMITTEES. The chairman shall appoint the members of a subcommittee from the membership of the MAC. If other expertise is needed to support subcommittees, the Commissioners or the Director of Medical Review may appoint appropriate individuals.

WORK GROUPS. When deemed necessary by the Director of Medical Review or the Commissioners, work groups will be formed by the Director. At least one member of the work group must also be a member of the MAC.

WORK PRODUCT. No member of the MAC, a subcommittee, or a work group may claim or is entitled to an intellectual property right in work performed by the MAC, a subcommittee, or a work group.

MEETINGS Frequency of Meetings. Regular meetings of the MAC shall be held at least quarterly each fiscal year during regular Commission working hours.

CONDUCT AS A MAC MEMBER. Special trust has been placed in members of the Medical Advisory Committee. Members act and serve on behalf of the disciplines and segments of the community they represent and provide valuable advice to the Medical Review Division and the Commission. Members, including alternate members, shall observe the following conduct code and will be required to sign a statement attesting to that intent.

Comportment Requirements for MAC Members:

Learn their duties and perform them in a responsible manner;

Conduct themselves at all times in a manner that promotes cooperation and effective discussion of issues among MAC members;

Accurately represent their affiliations and notify the MAC chairman and Medical Review Director of changes in their affiliation status;

Not use their memberships on the MAC: a. in advertising to promote themselves or their business. b. to gain financial advantage either for themselves or for those they represent; however, members may list MAC membership in their resumes;

Provide accurate information to the Medical Review Division and the Commission;

Consider the goals and standards of the workers' compensation system as a whole in advising the Commission;

Explain, in concise and understandable terms, their positions and/or recommendations together with any supporting facts and the sources of those facts;

Strive to attend all meetings and provide as much advance notice to the Texas Workers' Compensation Commission staff, attn: Medical Review Director, as soon as possible if they will not be able to attend a meeting; and

Conduct themselves in accordance with the MAC Procedures and Standards, the standards of conduct required by their profession, and the guidance provided by the Commissioners, Medical Review Division or other TWCC staff.

TRD-200501881

Susan Cory

General Counsel

Texas Workers' Compensation Commission

Filed: May 10, 2005

WorkSource of the South Plains

Publication Requirement Extended Plan Program Year
2004/Fiscal Year 2005 Integrated Plan Modification

The **South Plains Workforce Development Board (WDB)** issues this public notice of its annual strategic and operational Plan Modification. The South Plains WDB is responsible for the implementation of workforce development programs throughout the South Plains area, which includes the following 15 counties: Bailey, Cochran, Crosby, Dickens, Floyd, Garza, Hale, Hockley, King, Lamb, Lynn, Lubbock, Motley, Terry, and Yoakum. The Board's Integrated Plan Modification for extended program year 2004 and fiscal year 2005 will be submitted to the Texas Workforce Commission no later than **July 25, 2005**. At a minimum, the Integrated Plan Modification will include detailed information about current labor market conditions and training and employment opportunities for jobseekers. Additionally, innovative strategies provide area businesses with a network of information and services that assist with their unique employment needs. Workforce programs and services covered in this strategic and operational Plan Modification include: child care, TANF/Choices, Workforce Investment Act, Project RIO, Veteran's Services, Unemployment Insurance and several other workforce programs.

The South Plains WDB will make available to the public a draft of its strategic and operational Plan Modification for the plan year of July 1, 2005 through September 30, 2005. The public comment period will begin on **May 9, 2005** and will end at the close of business on: **July 11, 2005**. The general public may access the document on the Board's website at www.worksourceonline.net or interested parties may receive

a copy of the draft Plan Modification document at the following physical address: 1301 Broadway, Ste. 201, Lubbock, Texas 79401.

Public comments must be submitted in writing to the above address, emailed at Jessica.adams@twc.state.tx.us, or faxed to the following number: (806) 744-5378. The deadline for receipt of comments is **5:00 p.m. on July 11, 2005**. All comments will be submitted to the Texas Workforce Commission and incorporated as part of the Board's Plan Modification. The South Plains Board is an equal opportunity organization. Auxiliary aids or services are available upon request to those

individuals with disabilities. For extra assistance, please contact us at (806) 744-1987.

TRD-200501887

Rocky Brown

Interim Executive Director

WorkSource of the South Plains

Filed: May 10, 2005

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How to Use the Texas Register

Information Available: The 14 sections of the *Texas Register* represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules - sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules - notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 29 (2004) is cited as follows: 29 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "29 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 29 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code*, section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online through the Internet. The address is: <http://www.sos.state.tx.us>. The *Register* is available in an .html

version as well as a .pdf (portable document format) version through the Internet. For subscription information, see the back cover or call the Texas Register at (800) 226-7199.

Texas Administrative Code

The *Texas Administrative Code (TAC)* is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles (using Arabic numerals) and Parts (using Roman numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at <http://www.sos.state.tx.us/tac>. The following companies also provide complete copies of the TAC: Lexis-Nexis (1-800-356-6548), and West Publishing Company (1-800-328-9352).

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15:

1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Table of TAC Titles Affected*. The table is published cumulatively in the blue-cover quarterly indexes to the *Texas Register* (January 16, April 9, July 9, and October 8, 2004). If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with one or more *Texas Register* page numbers, as shown in the following example.

TITLE 40. SOCIAL SERVICES AND ASSISTANCE

Part I. Texas Department of Human Services

40 TAC §3.704.....950, 1820

The *Table of TAC Titles Affected* is cumulative for each volume of the *Texas Register* (calendar year).

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